

1 Q. Please provide copies of all agreements relating to the Muskrat Falls Project,
2 including:

3

4 (i) Power Purchase Agreement between Newfoundland Hydro and the Muskrat
5 Falls Corporation;

6 (ii) Generator Interconnection Agreement;

7 (iii) Transmission Funding Agreement;

8 (iv) Labrador Island Link Assets Agreement;

9 (v) Labrador Island Link Lease Agreement;

10 (vi) Labrador Island Link Remedies Agreement;

11 (vii) Muskrat Falls Water Rights Agreement; and

12 (viii) Sanction Agreement.

13

14

15 A. Please find attached the following documents:

16 (i) Power Purchase Agreement between Hydro and the MFC: attached as PUB-
17 Nalcor-016, Attachment 1;

18 (ii) Generator Interconnection Agreement: attached as PUB-Nalcor-016,
19 Attachment 2;

20 (iii) Transmission Funding Agreement: attached as PUB-Nalcor-016, Attachment
21 3;

22 (iv) Labrador-Island Link Assets Agreement: attached as PUB-Nalcor-016,
23 Attachment 4;

24 (v) Labrador-Island Link Lease Agreement: attached as PUB-Nalcor-016,
25 Attachment 5;

26 (vi) Labrador-Island Link Remedies Agreement: attached as PUB-Nalcor-016,
27 Attachment 6;

- 1 (vii) Muskrat Falls Water Rights Agreement: attached as PUB-Nalcor-016,
- 2 Attachment 7; and
- 3 (viii) Sanction Agreement: attached as PUB-Nalcor-016, Attachment 8.

NEWFOUNDLAND AND LABRADOR HYDRO

and

MUSKRAT FALLS CORPORATION

POWER PURCHASE AGREEMENT

November 29, 2013

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- SCHEDULE 1 BASE BLOCK CAPITAL COSTS RECOVERY**
- SCHEDULE 2 INITIAL LOAD FORECAST AND BASE BLOCK ENERGY**
- SCHEDULE 3 MF PROJECT DESCRIPTION**
- SCHEDULE 4 FORM OF ASSIGNMENT**
- SCHEDULE 5 DISPUTE RESOLUTION PROCEDURE**
- SCHEDULE 6 GENERAL SECURITY AGREEMENT**
- SCHEDULE 7 CONFIDENTIAL INFORMATION SCHEDULE**
- SCHEDULE 8 STEP-IN AGREEMENT**

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is made effective the 29th day of November, 2013 (the “Effective Date”).

AMONG:

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**Muskrat**”)

WHEREAS:

- A. Muskrat intends to design, develop, finance, construct, commission, own, operate, maintain and sustain the MF Plant and make the MF Plant available for the generation of electricity; and
- B. NLH and Muskrat have entered into this Agreement for the purchase and sale of Capacity, Energy, Ancillary Services and GHG Credits on the terms and conditions set forth in this Agreement;

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

“**14.8 Notice**” has the meaning set forth in **Section 14.8(a)**;

“**156 Week Forecast**” has the meaning set forth in **Section 3.4(a)**;

“**Acquiror**” has the meaning set forth in the Step-In Agreement;

“**Actual Quarterly O&M Costs**” has the meaning set forth in **Section 4.2(c)(i)**;

“**Actual Quarterly O&M Cost Accounting**” has the meaning set forth in **Section 4.2(c)(i)**;

“Adequacy” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria, taking into account scheduled and unscheduled outages of system elements;

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person;

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

“Ancillary Services” means the services that are necessary to support the transmission of Energy and Capacity from generation to load while maintaining the Reliability of a transmission system, including operating reserves, reactive supply, voltage control, blackstart capability, and regulation and frequency response;

“Annual Average Sales Price” means the arithmetic average of the Net Sales Prices from sales of all Energy and Capacity to External Markets (excluding the NS Block and any sales within NL) in an Operating Year, expressed in dollars per MWh (a) contracted by Muskrat for sales it makes in External Markets outside NL or (b) contracted by an Affiliate of Muskrat for sales in External Markets outside NL assigned to Muskrat;

“Annual Energy Report” has the meaning set forth in **Section 4.5(b)**;

“Annual Maintenance Plan” means an annual maintenance plan for the MF Plant prepared by Muskrat and approved by the JOC setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, and containing such other information as may be required by the JOC, acting reasonably;

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

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

“Base Block Capital Costs Recovery” has the meaning set forth in **Schedule 1**;

“Base Block Energy” means the annual amount of Energy forecasted at the Effective Date by NLH from the MF Plant to meet the anticipated requirements of the NL Native Load during each Operating Year, being the amount of Energy set forth in **Schedule 2**;

“Base Block Payments” has the meaning set forth in **Section 4.2(b)**;

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

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

“CFLCo” means Churchill Falls (Labrador) Corporation Limited, a corporation incorporated pursuant to the laws of Canada and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River in the vicinity of Churchill Falls, NL;

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

“Churchill Delivery Points” means the points of interconnection between the CFLCo Plant and the LTA, as identified in the LTA Project Description;

“Claiming Party” has the meaning set forth in **Section 12.2(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;

“Collateral Agent” means the Toronto Dominion Bank, in its capacity as collateral agent under the Financing Documents, and includes any successor thereof in such capacity;

“Commissioning Date” means the date on which all of the following have occurred:

- (a) the MF Plant Commissioning has been completed;
 - (b) the LTA Commissioning has been completed;
 - (c) the NLSO has accepted in writing that the LTA Commissioning has been completed;
- and

- (d) the Financing Parties have accepted in writing that the MF Plant Commissioning has been completed and the financing parties with respect to the LTA have accepted in writing that the LTA Commissioning has been completed;

“Commissioning Period” means the period commencing on the First Power Date and ending on the Commissioning Date;

“Commissioning Period Block” means all Energy and Capacity associated with the MF Plant from time to time during the Commissioning Period;

“Commissioning Period Payment” has the meaning set forth in **Section 4.1(b)**;

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and
- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contain or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“Construction Period” means the period which commenced on December 17, 2012 and terminates at the time commissioning occurs on the Commissioning Date;

“Contracted Capacity” means the MF Plant Capacity less the Capacity associated with the NS Block;

“Contracted Commitments” means firm commitments by or on behalf of Muskrat as permitted by this Agreement to sell Energy and Capacity in External Markets under contracts for prescribed amounts of such Energy and Capacity for fixed durations, and includes the NS Block;

“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” means any reduction in the delivery of Energy, Capacity or Ancillary Services as a result of the MF Plant being unable to provide such services at the MF Plant Capacity;

“Delivered Capacity” means the Capacity actually delivered by Muskrat to NLH at the Delivery Points;

“Delivered Energy” means the Energy actually delivered by Muskrat to NLH at the Delivery Points;

“Delivery Points” means the Muskrat Delivery Points and the Churchill Delivery Points;

“Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the MF Plant in accordance with the MF Project Description, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, all activities and undertakings that are O&M Activities and occur prior to the Commissioning Date, the products of such activities and undertakings and the resolution of all Claims and disputes related thereto, but for greater certainty excludes O&M Activities which occur after the Commissioning Date;

“Development Capital Costs” means the total of all costs incurred by or on behalf of Muskrat for the Development Activities, including IBA Payments during the Construction Period net of Commissioning Period Payments paid by NLH in accordance with **Section 4.1(c)**;

“Development Financing Costs” means, without duplication, all costs incurred with respect to debt and equity financing of the Development Capital Costs, as applicable in the following categories:

- (a) interest expenses;
- (b) costs associated with hedging, derivative or swap transactions;
- (c) costs incurred that are directly attributable to each of the structuring, securing and arrangement of debt or equity financing, including costs associated with legal, tax, accounting, technical and other internal or third party advisors, fees and other costs payable pursuant to the Financing Documents;
- (d) underwriting, standby, commitment and other fees;

- (e) rating agency fees; and
- (f) costs of financing cash reserves required by the Financing Parties;

“Direct Claim” has the meaning set forth in **Section 16.4(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to the other Party or an Affiliate of the other Party;

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

“Dispute Resolution Procedure” has the meaning set forth in **Section 12.1(a)**;

“ECA” means the Energy and Capacity Agreement between Nalcor and Emera, dated July 31, 2012 relating to, among other things, the sale and delivery of the NS Block;

“Effective Date” has the meaning set forth at the top of Page 1 of this Agreement;

“Emera” means Emera Inc., a company incorporated pursuant to the laws of the Province of Nova Scotia, and includes its successors;

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

“Energy Control Centre” means one or more energy control centres, as necessary, for the remote monitoring, control and coordinated operation of the Bulk Electric System;

“Estimated O&M Costs” means an amount that is the good faith estimate of Muskrat of the O&M Costs that it expects to incur in respect of a given Operating Month;

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

“External Markets” means wholesale markets outside the island portion of NL where Energy and Capacity may be bought or sold on a bilateral or bid basis;

“External Market Day-Ahead Schedule” has the meaning set forth in **Section 3.5(c)**;

“Financing” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in Muskrat with respect to the MF Plant, whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to Muskrat by any Person by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance or Refinance the Development Activities;

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

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

“First Power Date” means the date which is the latest of:

- (a) the date of the start-up and completion of testing activities required to demonstrate that one generation unit of the MF Plant is ready for safe and Reliable provision of Energy, Capacity and Ancillary Services;
- (b) the date of completion of testing activities required to demonstrate that the first 315 kV transmission line of the LTA is ready for safe and Reliable transmission of Energy from a Muskrat Delivery Point to a Churchill Delivery Point; and
- (c) the date on which the NLSO gives written approval for the commencement of commercial transmission operations of the LTA;

“Force Majeure” means an event, condition or circumstance (each an **“Event”**) beyond the reasonable control and without fault or negligence of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;

- (d) breakage or an accident or inadvertent action or failure to act causing material physical damage to, or materially impairing the operation of, or access to the MF Plant or the NL Transmission System or any machinery or equipment comprising part of or used in connection with the MF Plant or the NL Transmission System;
- (e) a revocation, amendment, failure to renew or other inability to maintain in force any order, permit, licence, certificate or authorization from any Authorized Authority, unless such inability is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization;
- (f) any unplanned partial or total Curtailment, interruption or reduction of the generation or delivery of the Energy Scheduled by NLH for delivery pursuant to this Agreement or the Energy or Capacity that is required by the NLSO for safe and Reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices;
- (g) any event or circumstance affecting a contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that such contractor is relieved from the performance of its obligations under a contract affecting a Party; and
- (h) any lack of precipitation resulting in low water runoff into the Churchill River watershed upstream of the MF Plant;

but none of the following shall be a Force Majeure:

- (i) lack of finances or changes in the economic circumstances of a Party;
- (j) if the Event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (k) any delay in the settlement of any Dispute;

“Forgivable Event” means any one of a Force Majeure, Planned Maintenance, a Safety Event or an action required to be taken by a Party to comply with Good Utility Practice unless such action is necessitated by or results from such Party’s failure to comply with Good Utility Practice;

“Four Week Schedule” has the meaning set forth in **Section 3.4(b)**;

“Funding Vehicle” means the Muskrat Falls/Labrador Transmission Assets Funding Trust, a trust pursuant to the laws of NL settled by the MF/LTA Funding Trust Declaration dated November 1, 2013 between Nalcor, in its capacity as settlor, and BNY Trust Company of Canada, in its capacity as trustee;

“**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;

“**GHG Credits**” means greenhouse gas credits or allowances, including all attributes associated with renewable energy, associated with the displacement or avoidance of generation from greenhouse gas emitting facilities resulting from the Energy and associated Capacity produced by the MF Plant or any other renewable energy source used to provide Energy and Capacity pursuant to this Agreement;

“**GIA**” means the Generator Interconnection Agreement of even date herewith entered into among the NLSO, Muskrat and Labrador Transco;

“**GW**” means gigawatt;

“**GWh**” means GW hour;

“**Good Utility Practice**” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, or 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. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods, or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

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

“**Holder**” has the meaning set forth in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

“**IBA Payments**” means all payments made by Muskrat to aboriginal peoples pursuant to impact and benefit agreements now or hereafter entered into by, or assigned to, Muskrat, including the Impact and Benefit Agreement dated November 18, 2011 among Nalcor, the Innu Nation and related Innu parties;

“**IRR**” has the meaning set forth in **Schedule 1**;

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

“**Indemnified Party**” has the meaning set forth in **Section 16.4(a)**;

“**Indemnitor**” has the meaning set forth in **Section 16.4(a)**;

“**Initial Financing**” means that portion of the Financing loaned by the Funding Vehicle to Muskrat;

“**Initial Load Forecast**” means the projected Load Forecast for each Operating Year estimated by NLH at the Effective Date, being the amount set forth in **Schedule 2**;

“**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;

“**JDC**” has the meaning set forth in **Section 2.2**;

“**JOC**” has the meaning set forth in **Section 5.1**;

“**JOC Matters**” has the meaning set forth in **Section 5.3(a)**;

“**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;

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

“**LIL LP**” means Labrador-Island Link Limited Partnership, a limited partnership, established pursuant to the laws of NL by the Limited Partnership Agreement dated July 31, 2012, and includes its successors;

“**LIL Opco**” means Labrador-Island Link Operating Corporation, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**LTA**” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant, the LIL and certain portions of the NL Transmission System in Labrador, as more particularly described in the LTA Project Description;

“**LTA Capital Costs Recovery**” has the meaning set forth in the GIA;

“LTA Commissioning” means the testing activities required to demonstrate that the LTA is ready for safe and Reliable commercial operation in accordance with the LTA Project Description;

“LTA Payments” has the meaning set forth in the GIA;

“LTA Project Description” has the meaning set forth in the GIA;

“LTA Redemption Value” has the meaning set forth in the GIA;

“LTAMP” means a long term asset management plan describing and quantifying the O&M Activities for each year of the Supply Period in sufficient detail to determine the estimated annual O&M Costs, including:

- (a) a description of each activity, including routine annual O&M Activities, anticipated Sustaining Activities and retirements which do not occur annually;
- (b) the expected year of the occurrence of each such activity; and
- (c) estimates of the annual costs applicable to each such activity;

“Labrador Transco” means Labrador Transmission Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

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

“Load Forecast” means the forecast of NL Native Load prepared by NLH at a given point in time in respect of the current or any future Operating Year, and includes any forecasts of NL Native Load for any period within such Operating Years, as applicable;

“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;

“MF Plant” means the hydro-electric generation plant, including all apparatus and equipment to be constructed in accordance with the MF Project Description, to be owned and operated by Muskrat on the Churchill River in the vicinity of Muskrat Falls, NL for the production of Energy and Capacity and the provision of Ancillary Services;

“MF Plant Capacity” means the rated Capacity of the MF Plant that is sustainable for a continuous period of 60 minutes established in accordance with Reliability Standards;

“MF Plant Commissioning” means the start-up and testing activities required to demonstrate that all four generation units of the MF Plant are ready for safe and Reliable provision of Energy, Capacity and Ancillary Services in accordance with the MF Project Description;

“**MF Plant Service Life**” means the period of time immediately following the MF Plant Commissioning, as designated by an Authorized Authority from time to time, during which the MF Plant can continue to produce Energy and Capacity in accordance with Reliability Standards and the MF Project Description;

“**MF Project Description**” means a compilation of the fundamental engineering criteria, data and components which is the basis on which the MF Plant is to be constructed as set forth in **Schedule 3**;

“**MPPA**” means the Multi-Party Pooling Agreement to be entered into between the NLSO and the owners or operators of transmission facilities comprising the NL Transmission System pursuant to which the NLSO shall exercise Operational Control of, and provide transmission service over, the NL Transmission System;

“**MW**” means megawatt;

“**MWh**” means MW hour;

“**Maritime Link**” means the transmission facilities to be constructed in accordance with the Maritime Link Joint Development Agreement dated July 31, 2012 between Nalcor and Emera;

“**Measurement Canada**” means the agency of Industry Canada with that name, or any successor agency or entity performing similar functions;

“**Metering Equipment**” means all metering equipment necessary and used to measure Energy and Capacity, including instrument transformers, MWh-meters, data acquisition equipment, transducers and associated equipment;

“**Muskrat**” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**Muskrat Affiliate Assignee**” means an Affiliate of Muskrat to which all of the Muskrat Rights are assigned in accordance with the provisions of this Agreement;

“**Muskrat Default**” has the meaning set forth in **Section 14.1**;

“**Muskrat Delivery Points**” means the points of interconnection between the MF Plant and the LTA;

“**Muskrat Group**” has the meaning set forth in **Section 16.2(a)**;

“**Muskrat Material Default**” has the meaning set forth in **Section 14.6(a)**;

“**Muskrat Material Default Notice**” has the meaning set forth in **Section 14.6(a)**;

“**Muskrat Rights**” has the meaning set forth in **Section 19.1(a)**;

“**NL**” means the Province of Newfoundland and Labrador;

“**NL Crown**” means Her Majesty in Right of NL;

“**NL Customers**” means the wholesale and retail customers of electricity on the island portion of NL directly or indirectly connected to the NL Transmission System;

“**NL Native Load**” means the cumulative electricity consumption of NL Customers plus associated losses of Energy normally incurred in the transmission and distribution of Energy;

“**NL Native Load Day-Ahead Schedule**” has the meaning set forth in **Section 3.4(c)**;

“**NL Transmission System**” means electricity transmission assets in NL with a voltage level greater than or equal to 230 kV to be pooled under the MPPA;

“**NLH**” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**NLH Default**” has the meaning set forth in **Section 14.4**;

“**NLH Deferred Energy**” has the meaning set forth in **Section 3.1(c)**;

“**NLH External Market Sales**” has the meaning set forth in **Section 4.5(c)**;

“**NLH Group**” has the meaning set forth in **Section 16.1(a)**;

“**NLSO**” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH, responsible for safe and Reliable operation of the Bulk Electric System, or a functionally separate division of NLH performing this function, and includes its successors;

“**NS Block**” means the amount of Energy and associated Capacity and GHG Credits to be supplied to Emera pursuant to the ECA;

“**Nalcor**” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador) and includes its successors;

“**Net Sales Price**” means the net dollar amount received for a quantity of Energy or Capacity sold in External Markets (excluding the NS Block and sales within NL) by Muskrat or an Affiliate of Muskrat on behalf of NLH, and shall be calculated as the gross amount received by Muskrat or its Affiliate for the Energy or Capacity, less the amount of all expenses reasonably incurred by Muskrat or its Affiliate, as applicable, in the course of performing the sales transaction on NLH’s behalf in the applicable External Market, including in respect of Tariff Charges, transmission losses as calculated and applied by applicable system operators, transaction fees applied by system operators or authorized market operators, and any marketing fees or commissions that are reasonably incurred by Muskrat or its Affiliate in connection with the transaction;

“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;

“Notice” means 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 21.1**;

“O&M Activities” means all activities and undertakings performed by or on behalf of Muskrat that are required (considering the remaining MF Plant Service Life) to operate, maintain and sustain the MF Plant, including the Sustaining Activities, administration and reporting, but for greater certainty excludes the Development Activities;

“O&M Costs” means, without duplication, with respect to each Operating Month in each Operating Year, costs incurred for:

- (a) O&M Activities;
- (b) Operating Financing Costs;
- (c) IBA Payments;
- (d) payments pursuant to the Water Lease;
- (e) payments pursuant to the WMA;
- (f) payments pursuant to any real property leases, licences or easements necessary for access to lands on which the MF Plant is located, which are not otherwise Development Capital Costs;
- (g) Taxes (net of any Taxes recovered);
- (h) any amount payable by Muskrat arising from an indemnity obligation under the Financing Documents; and
- (i) LTA Payments;

“O&M Debt” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in Muskrat with respect to the MF Plant, whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to Muskrat by any Person by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation (including by way of hedging, derivative or swap transactions), in

each case to finance O&M Costs exclusive of the Financing, which are associated with an operating line of credit;

“O&M Standards” means the standards or requirements established or adopted by the JOC for the operation and maintenance of the MF Plant in accordance with Good Utility Practice for a long-term, low cost, Reliable generation facility, including monitoring and reporting on asset performance, frequency and scope of major inspections, applicable industry standards to apply in asset operation and maintenance, completion of the LTAMP, and the maintenance of appropriate critical spares, and includes standards or criteria established by the Standards Authority which are applicable to the MF Plant;

“Operating Financing Costs” means, without duplication, all costs incurred during the Supply Period with respect to debt and equity financing of the O&M Costs as applicable, in the following categories:

- (a) interest expenses;
- (b) return on equity;
- (c) costs associated with hedging, derivative or swap transactions;
- (d) costs incurred that are directly attributable to each of the structuring, securing and arrangement of debt or equity financing, including costs associated with legal, tax, accounting, technical and other internal or third party advisors and fees and other costs payable pursuant to financing documents in respect of the O&M Debt;
- (e) underwriting, standby, commitment and other fees;
- (f) rating agency fees; and
- (g) costs of financing cash reserves required by applicable financing parties;

“Operating Month” means:

- (a) in the case of the first Operating Month, the period of time commencing at the time commissioning occurs on the Commissioning Date and ending immediately prior to 12:00 noon, Newfoundland prevailing time, on the last day of the calendar month in which the day after the Commissioning Date occurs;
- (b) in the case of the last Operating Month, the period of time commencing 12:00 noon, Newfoundland prevailing time, on the last day of the previous calendar month and ending upon the termination or expiry of the Term; and
- (c) otherwise, each period of time during the Supply Period commencing 12:00 noon, Newfoundland prevailing time, on the last day of the previous calendar month and ending immediately prior to 12:00 noon, Newfoundland prevailing time, on the last day of such calendar month;

“Operating Requirements” means the applicable operating policies, standards and guidelines established for the Bulk Electric System, as may be revised from time to time;

“Operating Year” means (a) a calendar year of Operating Months during the Term except that the first Operating Year will commence at the time commissioning occurs on the Commissioning Date and end at 12:00 noon, Newfoundland prevailing time, on December 31 of the calendar year in which the day after the Commissioning Date occurs, and the last Operating Year will end upon the termination or expiry of the Term; or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

“Operational Control” means the authority to perform, direct or authorize security monitoring, adjustment of generation and transmission resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for Reliability, planning assessments, coordination with control area operators, voltage reductions and load shedding;

“PPA Services” means the delivery of Energy, Capacity and Ancillary Services by Muskrat to NLH in accordance with this Agreement;

“PUB” means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

“Paid in Full” means, in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment in cash to such Person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

“Parties” means NLH and Muskrat, 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;

“Planned Maintenance” means work that is necessary for the inspection, testing, repair, maintenance or overhaul of, or modifications to, a component of the MF Plant where appropriate and in accordance with Good Utility Practice, which in and of itself will result in the unavailability of all or part of the MF Plant Capacity or a restriction in MF Plant Capacity due to Reliability Standards requirements, which may otherwise restrict the delivery of all or a part of the Energy Scheduled by NLH for delivery pursuant to this Agreement;

“Planned Maintenance Period” means a period of planned total or partial outage of the MF Plant Capacity for the execution of Planned Maintenance;

“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;

“Qualified Assignee” means a Person which is:

- (a) an administrative or security agent of a Financing Party; and
- (b) with respect to the Muskrat Rights, an Affiliate or Affiliates of Muskrat, or a Holder, provided
 - (i) Muskrat and its Affiliate(s) or Muskrat and a Holder, as applicable, enter into an agreement with NLH substantially in the form of **Schedule 4**; and
 - (ii) there is a concurrent assignment to the same Person of the GIA and this Agreement;

“Quarter” means the three Operating Month periods corresponding to calendar quarters (or portion thereof, as applicable) during the Supply Period;

“Receiving Party” means a Party or an Affiliate of a Party that receives Confidential Information from the other Party or an Affiliate of the other Party;

“Recipient Party” has the meaning set forth in **Section 12.2(a)**;

“Redemption Value” means, at any time, a dollar value which is the sum of the following:

- (a) the costs of making all payments as are required to cause the Initial Financing to be Paid in Full, inclusive of outstanding principal, accrued interest, and any premium applicable under the Financing Documents;
- (b) all legal, advisory, transaction and administrative costs associated with **Section (a)** of this definition; plus
- (c) the LTA Redemption Value;

“Refinance” means to extend, renew or refinance any indebtedness where the amount of such indebtedness outstanding on the date of such extension, renewal or refinancing is not increased;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

“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;

“Reliability” means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security and **“Reliable”** has a correlative meaning;

“Reliability Standards” means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

“Remedies Consultation Period” has the meaning set forth in the Financing Documents;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

“Reserve” is the generating capacity available to the NLSO within a short interval of time, not to exceed 10 minutes, to meet demand in case there is a disruption to supply;

“Residual Block” has the meaning set forth in **Section 3.1(e)**;

“Residual Block Sales” has the meaning set forth in **Section 4.5(b)(vii)**;

“Safety Event” means an event that causes Muskrat to suspend delivery of Energy, or an event that causes the NLSO or Labrador Transco to suspend receipt of Energy into or delivery over the NL Transmission System, or any part thereof, for the purpose of safeguarding life or property by making repairs to the MF Plant or the Bulk Electric System in accordance with Good Utility Practice;

“Schedule”, **“Scheduled”** and **“Scheduling”** when used as a verb, means to take all acts necessary to schedule, or cause to be scheduled, the delivery of the Energy and Capacity to the Delivery Points, storage of Energy and provision for the Reserve in accordance with this Agreement;

“Scheduling Protocol” has the meaning set forth in **Section 3.5(f)**;

“Security” means the ability of an electric system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

“Standards Authority” means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the MF Plant or the NL Transmission System;

“Step-In Agreement” has the meaning set forth in **Section 21.14**;

“Supplemental Block Energy” has the meaning set forth in **Section 3.1(b)**;

“Supply Period” means the period commencing at the time commissioning occurs on the Commissioning Date and ending January 1, 2068, as may be extended pursuant to **Section 13.3(a)**;

“Sustaining Activities” means all activities and undertakings of a capital nature occurring during the Supply Period to replace or overhaul major assets and major components of the MF Plant, which do not occur annually and are necessary to sustain the MF Plant’s performance in accordance with Good Utility Practice, but for greater certainty excludes the Development Activities;

“System Emergency” means any abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission facilities or generation supply that could adversely affect the reliability of the NL Transmission System;

“Target NLH External Market Sales” means NLH’s target for sales of an amount of Energy equal to (a) Base Block Energy plus (b) NLH’s estimated Supplemental Block Energy minus (c) Energy Scheduled by NLH for delivery under this Agreement minus (d) NLH’s estimate of anticipated NLH Deferred Energy in the applicable Operating Year pursuant to **Section 3.4(a)(iii)**;

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

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

“Term” means the period that commences on the Effective Date and ends on the last day of the Supply Period;

“third party” means any Person that does not Control, is not Controlled by or is not under common Control with a Party;

“Third Party Claim” has the meaning set forth in **Section 16.4(b)**;

“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;

“**WMA**” means the water management agreement between CFLCo and Nalcor established by the PUB by Order No. P.U. 8 (2010) pursuant to the *Electrical Power Control Act, 1994* (Newfoundland and Labrador) and assigned to Muskrat by assignment dated November 29, 2013; and

“**Water Lease**” means the lease dated March 17, 2009, as amended from time to time, between the NL Crown and Nalcor and assigned to Muskrat by assignment dated November 29, 2013.

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.
- (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 GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement 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 Effective Date, 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 set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “**approved**”, “**decided**” or “**determined**” by a Party or requires a Party’s or its Representative’s “**consent**”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.
- (n) References to Other Agreements - Any reference in this Agreement to another agreement, other than the Water Lease, shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the

definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 12**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

- Schedule 1 - Base Block Capital Costs Recovery
- Schedule 2 - Initial Load Forecast and Base Block Energy
- Schedule 3 - MF Project Description
- Schedule 4 - Form of Assignment
- Schedule 5 - Dispute Resolution Procedure
- Schedule 6 - General Security Agreement
- Schedule 7 - Confidential Information
- Schedule 8 - Step-In Agreement

**ARTICLE 2
CONSTRUCTION**

2.1 Construction of MF Plant

Muskrat shall undertake all Development Activities using Good Utility Practice and in compliance with Applicable Law so as to be capable of delivering the MF Plant Capacity in accordance with Reliability Standards to the Muskrat Delivery Points.

2.2 Joint Development Committee

A Joint Development Committee (“JDC”) shall be established to provide NLH with information for the design, engineering, procurement, construction and commissioning of the MF Plant to be undertaken by Muskrat, as follows:

- (a) Composition - The JDC shall consist of two representatives appointed by each of Muskrat and NLH. A Muskrat representative shall be chair and a NLH representative shall be vice-chair. A quorum for JDC meetings shall be the chair and the vice-chair, or their delegates as authorized by this Agreement;
- (b) Duration - The JDC shall be established immediately following the Effective Date and continue to exist until the later of (i) the day that is one year after the day MF Plant Commissioning is completed, and (ii) the day when all Claims with respect to Development Activities and associated costs are settled;
- (c) Mandate - The JDC shall meet on a regular basis to provide a common understanding of project progress and to discuss issues related to the Development Activities and MF Plant Commissioning;
- (d) Topics - The following topics shall be reported upon at meetings of the JDC:
 - (i) monthly construction report;
 - (ii) safety performance;
 - (iii) environmental assessment update, performance and compliance;
 - (iv) budget and monthly actual to budget variance reports with respect to Development Capital Costs;
 - (v) update on expected Base Block Capital Costs Recovery;
 - (vi) reports of forecasted funding requirements for the MF Plant for the upcoming calendar quarter;
 - (vii) activity status reports (percent of project completion compared to percent of budget spent to date);

- (viii) changes to the MF Project Description;
 - (ix) financing updates;
 - (x) labour strategy and updates; and
 - (xi) other topics as the JDC may from time to time determine.
- (e) Meetings - The JDC shall meet at least monthly until the day that is one year after the day MF Plant Commissioning is completed.

2.3 Regulatory Approvals, Applicable Law & Reliability Standards

- (a) Muskrat shall at all times during the Construction Period comply with Applicable Law and undertake the Development Activities such that the MF Plant shall meet Reliability Standards upon MF Plant Commissioning.
- (b) Muskrat shall at all times during the Term of this Agreement procure and maintain in full force and effect all necessary Regulatory Approvals required by all Applicable Law to design, engineer, procure, construct, commission, operate and maintain the MF Plant or which are otherwise required for the performance of its obligations under this Agreement.

**ARTICLE 3
ENERGY AND CAPACITY MANAGEMENT**

3.1 Energy Allocation

- (a) Initial Load Forecast & Base Block Energy - **Schedule 2** sets forth, for each Operating Year, the Initial Load Forecast and the Base Block Energy.
- (b) Supplemental Block Energy - The “**Supplemental Block Energy**” means, in each Operating Year until the end of the 50th Operating Year, an amount of Energy equal to the lesser of:
 - (i) the amount of Energy by which the actual NL Native Load for such Operating Year exceeds the Initial Load Forecast for such Operating Year; and
 - (ii) the then current estimated long term annual average Energy production of the MF Plant less the (A) Base Block Energy and (B) Contracted Commitments.
- (c) NLH Deferred Energy - Throughout the Term, Muskrat shall maintain an account of Energy for NLH which shall never be less than zero (the “**NLH Deferred Energy**”), that:

- (i) shall be increased (A) during the Commissioning Period, by the amount of Energy designated by NLH to be deferred pursuant to **Section 3.3(a)**, and (B) at the end of each Operating Year until the end of the 50th Operating Year, by the amount of Energy by which the Delivered Energy in such Operating Year is less than the aggregate of Base Block Energy and Supplemental Block Energy; and
- (ii) shall be decreased (A) at the end of each Operating Year, by the amount of Energy by which the Delivered Energy in such Operating Year exceeds the aggregate of the Base Block Energy and the Supplemental Block Energy and (B) as and when determined, by the NLH External Market Sales.

Subject to **Section 3.2(a)**, the NLH Deferred Energy shall be available to NLH for forecasting and Scheduling during an Operating Year. After the 50th Operating Year and subject to **Section 3.2(a)**, NLH Deferred Energy shall be Scheduled by NLH and delivered by Muskrat in a manner that reduces NLH Deferred Energy to zero as soon as is commercially reasonable.

- (d) Order of Delivery - Energy forecasted and Scheduled by NLH under this Agreement for delivery by Muskrat to NLH in each Operating Year until the end of the 50th Operating Year, shall come first from Base Block Energy, then from Supplemental Block Energy and then from NLH Deferred Energy. NLH may only forecast and Schedule Energy for delivery by Muskrat after the 50th Operating Year from then remaining NLH Deferred Energy, if any.
- (e) Residual Block - The Parties acknowledge and agree that:
 - (i) Except to satisfy the NS Block, Muskrat may not enter into any Contracted Commitments in respect of any period for which NLH has not yet provided a 156 Week Forecast. Energy, Capacity and associated GHG Credits attributed to the MF Plant not otherwise forecasted or Scheduled by NLH in the then current 156 Week Forecast, Four Week Schedule and NL Native Load Day-Ahead Schedule (with the information in more recent 156 Week Forecasts, Four Week Schedules and NL Native Load Day-Ahead Schedules replacing the corresponding periods of prior 156 Week Forecasts, Four Week Schedules and NL Native Load Day-Ahead Schedules) shall be available for Scheduling and sale by Muskrat for the purpose of making non-firm sales and Contracted Commitments excluding the NS Block and shall be referred to as the “**Residual Block**”.
 - (ii) Any forecasting and Scheduling of Residual Block by Muskrat shall be subject to the following restrictions and limitations: (A) the then current 156 Week Forecasts, Four Week Schedules and NL Native Load Day-Ahead Schedules, (B) Capacity of the MF Plant, (C) WMA limitations, (D) hydrological conditions, and (E) Forgivable Events. Any such Residual Block sold pursuant to Contracted Commitments shall no longer be available for future forecasting or Scheduling by NLH.

- (iii) NLH shall have no interest in Residual Block Energy or associated Capacity or, except to the extent of NLH External Market Sales, the proceeds of sale thereof and Muskrat shall have the right to assign its rights to Residual Block Energy and associated Capacity to an Affiliate of Muskrat at any price determined by Muskrat in its sole discretion, including \$1.00.

- (f) Hydrological Risk - NLH shall operate its renewable energy resources in accordance with Good Utility Practice to satisfy the NL Native Load and manage hydrological risk. Provided that NLH operates its facilities and assets in accordance with Good Utility Practice, if due to dry conditions on the island portion of NL, NLH expects that it will be unable to satisfy NL Native Load using the Base Block Energy and the Supplemental Block Energy and its other facilities and assets, then:
 - (i) NLH may designate Base Block Energy from Operating Years subsequent to the current Operating Year to satisfy such shortfall; and
 - (ii) Muskrat will allocate Base Block Energy from such future Operating Years to address the Energy shortfall related to such hydrological conditions and the Base Block Energy so allocated will no longer be available to NLH in such future Operating Years.

Base Block Payments will not be varied by any such allocation, and all computations under **Schedule 1** shall continue as if the Base Block Energy had been delivered and sold to NLH as set forth in **Schedule 2**.

3.2 Forecasting and Scheduling Principles

- (a) Restrictions on Forecasting & Scheduling - NLH shall only forecast and Schedule Energy and Capacity attributable to the MF Plant to serve NL Native Load in accordance with Good Utility Practice and subject to the following restrictions and limitations: (i) Contracted Commitments, (ii) Capacity of the MF Plant, (iii) WMA limitations, (iv) hydrological conditions, and (v) Forgivable Events.

- (b) Availability Commitment - Subject to **Section 3.2(a)**, (i) all Energy and Capacity from the MF Plant that is forecasted or Scheduled by NLH in the 156 Week Forecast, Four Week Schedule or NL Native Load Day-Ahead Schedule shall be and remain available to NLH on a firm and priority basis, and (ii) NLH may at any time adjust the hourly Energy delivery requirements for NL Native Load in accordance with the Scheduling Protocol.

- (c) Good Faith - NLH and Muskrat acknowledge and agree that while preparing forecasts and schedules for Energy delivery and deferral, each shall do so in good faith and NLH shall at all times exercise reasonable commercial efforts to ensure such forecasts and schedules are consistent with the anticipated NL Native Load.

- (d) Plant Operations and Reservoirs - The Parties agree that in order to achieve the principles set forth in this **Section 3.2**, NLH shall have maximum flexibility in

Scheduling Energy and Capacity from the MF Plant for the purpose of meeting the NL Native Load provided that such flexibility shall be subject to the provisions of **Section 3.2(a)**. As a consequence, all forecasting and Scheduling in respect of the delivery of Delivered Energy shall be conducted to reflect the foregoing and Muskrat shall deliver to NLH from time to time, upon reasonable request:

- (i) Operating Characteristics - all information available to Muskrat regarding operating characteristics of the MF Plant, including turbine/generator capability and efficiency, tailwater and headwater relationships, spillway characteristics, reservoir storage volume curves and all other information as may be reasonably requested by NLH for the purpose of modeling production scheduling of the MF Plant;
- (ii) Hydrological Information - all historic, current and forecasted hydrological information available to Muskrat with respect to the Churchill River and its tributaries and other information as may be reasonably requested by NLH for the purpose of establishing current and long term forecasts for production scheduling of the MF Plant;
- (iii) Water Management Agreement - all information available to Muskrat relevant to water management and the WMA, including quantities of stored Energy, upstream storage capability along the Churchill River, water spillage amounts and other information as may be reasonably requested by NLH to enable NLH to assess storage opportunities and spillage risks.

3.3 **Commissioning Period**

- (a) NLH Right to Commissioning Period Block - During the Commissioning Period and subject to **Section 3.2(a)**, NLH may at its sole discretion, as set forth in the applicable 156 Week Forecasts, Four Week Schedules and NL Native Load Day-Ahead Schedules:
 - (i) take delivery of the Commissioning Period Block, in whole or in part, to meet the NL Native Load; and/or
 - (ii) request Muskrat to defer the Energy portion of the Commissioning Period Block, in whole or in part, causing such deferred portion to become NLH Deferred Energy provided Muskrat is able to do so acting reasonably and in accordance with Good Utility Practice.
- (b) Muskrat May Designate Residual Block Deliveries - Subject to Muskrat's obligations pursuant to the ECA to supply the NS Block to Emera upon the commissioning of three generating units at the MF Plant, Muskrat may designate any Commissioning Period Block not delivered or deferred at the request of NLH pursuant to **Section 3.3(a)** to form part of the Residual Block.

- (c) Ancillary Services - NLH shall be entitled to the Ancillary Services related to the Commissioning Period Block concurrently with the delivery thereof.

3.4 NLH Forecasting and Scheduling - Supply Period

- (a) NLH 156 Week Forecast - Subject to **Section 3.2(a)** and taking into account the information provided by Muskrat pursuant to **Section 3.5(a)**, no later than seven days before the First Power Date and no later than three days before each calendar quarter thereafter to the end of the Supply Period, NLH shall deliver to Muskrat a rolling 156 week forecast (the “**156 Week Forecast**”) that includes:
 - (i) Energy and Capacity required by NLH from Muskrat weekly on a firm basis and on a potential basis to service NL Native Load;
 - (ii) any changes to the Load Forecast;
 - (iii) NLH’s good faith estimate of anticipated NLH Deferred Energy in each Operating Year of such 156 Week Forecast;
 - (iv) Target NLH External Market Sales for each Operating Year; and
 - (v) estimated Base Block Energy designated pursuant to **Section 3.1(f)(i)**.
- (b) NLH Four Week Schedule - Subject to **Section 3.2(a)** and taking into account Muskrat’s schedule in **Section 3.5(b)**, no later than seven days before the First Power Date and no later than three days before each calendar week thereafter to the end of the Supply Period, NLH shall deliver to Muskrat a schedule of NLH’s firm and potential requirements for the next four weeks (the “**Four Week Schedule**”) that includes:
 - (i) Energy in each hour required by NLH from Muskrat to be delivered to service NL Native Load; and
 - (ii) Capacity to be maintained available in each hour required by NLH from the MF Plant to meet NLH’s Reserve requirements.

Each four week schedule shall replace any schedule previously delivered pursuant to this **Section 3.4(b)** and shall be replaced by the NL Native Load Day-Ahead Schedule for each day to which such NL Native Load Day-Ahead Schedule relates.

- (c) NL Native Load Day-Ahead Schedule - Subject to **Section 3.2(a)** and taking into account Muskrat’s schedule in **Section 3.5(c)**, no later than the day prior to the First Power Date and on each day of the Supply Period, NLH shall deliver to Muskrat a schedule of NLH’s firm requirements of Energy and Capacity to service the NL Native Load for the next day (“**NL Native Load Day-Ahead Schedule**”) in compliance with the Scheduling Protocol.

- (d) Delivery by Muskrat and Acceptance by NLH - Subject to a Forgivable Event, Muskrat shall deliver and NLH shall accept at the Delivery Points the Energy Scheduled in accordance with the NL Native Load Day-Ahead Schedule and Muskrat shall maintain at the Delivery Points the Capacity Scheduled in accordance with the NL Native Load Day-Ahead Schedule, as each may be adjusted in accordance with **Sections 3.2(b)**.
- (e) Ancillary Services - NLH shall be entitled to the Ancillary Services related to the Delivered Energy concurrently with the delivery thereof.

3.5 Muskrat Forecasting and Scheduling - Supply Period

- (a) Contracted Commitments - Muskrat shall notify NLH of all information available to Muskrat regarding the timing and Scheduling of Contracted Commitments upon entering into contracts therefor.
- (b) Muskrat Four Week Schedule - No later than eight days before the First Power Date and no later than four days before each calendar week thereafter to the end of the Supply Period or at a time determined in accordance with the WMA, Muskrat shall deliver to NLH a schedule that sets forth all Contracted Commitments required for the following four week period that includes:
 - (i) Energy in each hour required by Muskrat from the MF Plant to fulfill Contracted Commitments; and
 - (ii) Capacity to be maintained available in each hour required by Muskrat from the MF Plant to fulfill Contracted Commitments.

Each four week schedule shall replace any schedule previously delivered pursuant to this **Section 3.5(b)** and shall be replaced by the External Market Day-Ahead Schedule for each day to which such External Market Day-Ahead Schedule relates.

- (c) Muskrat External Market Day-Ahead Schedule - On or before the day before the First Power Date and on each day of the Supply Period, Muskrat shall deliver to NLH a schedule of Contracted Commitments for the following day ("**External Market Day-Ahead Schedule**") in compliance with the Scheduling Protocol.
- (d) MF Plant Limitations - Muskrat shall notify NLH at the earliest reasonable opportunity of any event or condition which would potentially or actually limit Muskrat's ability to deliver Energy and maintain Capacity reflected in the NL Native Load Day-Ahead Schedule whether caused by hydrological conditions, the WMA or otherwise.
- (e) System Emergencies - Notwithstanding anything to the contrary herein, when a System Emergency occurs, Muskrat shall curtail deliveries of Residual Block sales which are not Contracted Commitments to the extent necessary, in order to utilize

as much of the MF Plant Capacity as is available to supply Energy and Capacity to NLH to enable NLH to meet the NL Native Load.

- (f) Scheduling Protocol - At least six months prior to the anticipated First Power Date, Muskrat and NLH shall develop a protocol for Scheduling daily deliveries of Energy and Capacity pursuant to this Agreement (the "**Scheduling Protocol**").

3.6 Ancillary Services

In connection with its obligation to provide the Ancillary Services, Muskrat shall grant:

- (a) control of the MF Plant generating units to the Energy Control Centre to allow the NLSO to use such units for automatic generation control and maintaining system Reserve requirements to the extent of the MF Plant Capacity, subject to the WMA, equipment and environmental constraints;
- (b) control of the MF Plant generating units to the Energy Control Centre to allow the NLSO to use the full voltage regulation and reactive power supply capability of the MF Plant within the operating capability of the MF Plant equipment; and
- (c) any other control of the MF Plant capability to the Energy Control Centre required by the NLSO to utilize such capability as required for Reliability of the interconnected electricity system for NL.

ARTICLE 4 PURCHASE AND SALE OF ENERGY

4.1 Commissioning Period Block

- (a) Purchase and Sale of Commissioning Period Block - During the Commissioning Period, Muskrat shall deliver to NLH and NLH shall purchase from Muskrat that portion of the Commissioning Period Block which NLH Schedules for delivery and Muskrat shall defer for NLH and NLH shall purchase from Muskrat that portion of the Energy of the Commissioning Period Block designated by NLH pursuant to **Section 3.3(a)**.
- (b) Commissioning Period Payment - On the 20th day of each Operating Month during the Commissioning Period, NLH shall pay to Muskrat for the Commissioning Period Block delivered to or deferred at the request of NLH during the previous Operating Month \$1.00 or any greater amount designated by NLH ("**Commissioning Period Payment**") plus \$1.00 for related Ancillary Services.
- (c) Allocation of Commissioning Period Payment - Muskrat shall apply the Commissioning Period Payments towards payment of Development Capital Costs,

which shall have the effect of reducing the costs to be included in calculating the Base Block Capital Costs Recovery.

4.2 Base Block Energy

- (a) Purchase and Sale of Base Block Energy - During the Supply Period, Muskrat shall sell to NLH and NLH shall purchase from Muskrat the Base Block Energy.
- (b) Base Block Payments - NLH shall pay to Muskrat for the Base Block Energy on the first day of each Operating Month, as applicable, during the Supply Period (“**Base Block Payments**”) an amount equal to the aggregate of:
 - (i) the Base Block Capital Costs Recovery (calculated and adjusted in accordance with **Schedule 1**); and
 - (ii) the Estimated O&M Costs in respect of such Operating Month.
- (c) True Up of Estimated O&M Costs
 - (i) Within 60 days after the end of each Quarter during which Base Block Payments have been paid by NLH to Muskrat, Muskrat shall deliver a Notice (the “**Actual Quarterly O&M Cost Accounting**”) setting out the total actual aggregate O&M Costs incurred by Muskrat in respect of the Operating Months comprising such Quarter (the “**Actual Quarterly O&M Costs**”). The Actual Quarterly O&M Cost Accounting shall set out the Actual Quarterly O&M Costs incurred by Muskrat by component part (using the definition of O&M Costs as a guide), together with such other detail and supporting documentation as reasonably required by NLH to review the calculation of the Actual Quarterly O&M Costs.
 - (ii) Should the Actual Quarterly O&M Costs exceed the Estimated O&M Costs recovered by Muskrat for the given Quarter pursuant to **Section 4.2(b)**, NLH shall pay to Muskrat within 15 days of receipt by NLH of the Actual Quarterly O&M Cost Accounting the amount by which the Actual Quarterly O&M Costs exceeded the Estimated O&M Costs for the applicable Quarter. Should the Actual Quarterly O&M Costs be less than the sum of the Estimated O&M Costs paid by NLH for the given Quarter pursuant to **Section 4.2(b)**, Muskrat shall within 15 days of delivery of the Actual Quarterly O&M Cost Accounting, at its option, either (i) pay to NLH the amount by which the Estimated O&M Costs for the applicable Quarter exceeded the Actual Quarterly O&M Costs, or (ii) deliver to NLH a Notice authorizing NLH to credit against the next immediate Base Block Payments the amount by which the Estimated O&M Costs for the applicable Quarter exceeded the Actual Quarterly O&M Costs.
- (d) Base Block Payments (Irrevocable Obligation) - Notwithstanding any other provision of this Agreement, including **Section 15.1**, until the date on which the Initial

Financing is Paid in Full, NLH's obligations to make the Base Block Payments shall be absolute, unconditional and irrevocable, and shall not be subject to any reductions under any circumstances whatsoever.

- (e) Base Block Payments (Pro Rata) - At all times subsequent to the date on which the Initial Financing is Paid in Full and until the end of the Supply Period, if NLH does not receive the entire Energy and Capacity provided for in the NL Native Load Day-Ahead Schedule and the NLH Deferred Energy is not otherwise deferred or sold in accordance with this Agreement, then NLH shall pay for only the pro rata portion of the Base Block Payments for such Energy received, deferred or sold.

4.3 Supplemental Block Energy

During the Supply Period, Muskrat shall sell to NLH and NLH shall purchase from Muskrat the Supplemental Block Energy for the consideration of \$1.00 for each Operating Year, payable in advance on the first day of each Operating Year.

4.4 Ancillary Services

During the Supply Period, Muskrat shall sell to NLH and NLH shall purchase from Muskrat the Ancillary Services provided in connection with the Delivered Energy for the consideration of \$1.00 for each Operating Year, payable in advance on the first day of each Operating Year.

4.5 External Market Energy Sales

- (a) Maximizing Price - Muskrat shall use commercially reasonable efforts to maximize the price received when entering into Residual Block Sales outside NL.
- (b) Annual Report - Within 30 days following the end of each Operating Year, Muskrat shall deliver to NLH a monthly summary ("**Annual Energy Report**") of the following for such Operating Year, in a format and providing such details as are reasonably required by NLH:
 - (i) Delivered Energy;
 - (ii) Delivered Capacity;
 - (iii) NLH Deferred Energy;
 - (iv) Contracted Commitments;
 - (v) the amount of Delivered Energy to NLH in excess of Base Block Energy including itemization of Base Block Energy designated pursuant to **Section 3.1(f)(i)**, Supplemental Block Energy and then accumulated NLH Deferred Energy for which NLH is required to pay in accordance with **Section 4.5(e)**;

- (vi) Energy that was Scheduled by NLH pursuant to this Agreement which was not delivered, with reasons for such non-deliveries;
 - (vii) the amount of Residual Block Energy and Capacity sold into External Markets (the “**Residual Block Sales**”);
 - (viii) the Annual Average Sales Price including the calculation thereof; and
 - (ix) any water spilled.
- (c) NLH shall have the right, within five Business Days of receipt of the Annual Energy Report for an Operating Year, exercisable in good faith, to specify how much of the NLH Deferred Energy, not to exceed the lesser of (i) the Residual Block Sales and (ii) Target NLH External Market Sales, shall be deemed to have been sold on NLH’s behalf (“**NLH External Market Sales**”).
- (d) Subject to the payment by NLH to Muskrat of the Base Block Payments for an Operating Year, Muskrat shall pay to NLH within 45 days after such Operating Year an amount equal to the sum of:
- (i) the product of (A) NLH External Market Sales (excluding sales within NL) multiplied by (B) the Annual Average Sales Price, for such Operating Year, plus
 - (ii) the total of all amounts received by Muskrat for Residual Block Sales specified by NLH pursuant to **Section 4.5(c)** to have been sold by Muskrat within NL on NLH’s behalf, less all reasonable costs incurred in respect of such sales,
- to a maximum of the value of the Residual Block Sales in respect of Energy.
- (e) NLH shall pay to Muskrat within 45 days of such Operating Year an amount equal to the product of (i) the amount by which Delivered Energy in such Operating Year from the MF Plant exceeds the aggregate of Base Block Energy (including Base Block Energy designated pursuant to **Section 3.1(f)(i)**), Supplemental Block Energy and then accumulated NLH Deferred Energy multiplied by (ii) the Annual Average Sales Price for such Operating Year.

4.6 **Risk and Responsibility**

- (a) Muskrat shall indemnify NLH pursuant to **Article 16** for any Third Party Claim, and any Claims of any kind by the NLSO, caused by the generation, sale and delivery, or the failure to generate or deliver Energy, Capacity, Ancillary Services and GHG Credits required to be supplied by Muskrat hereunder to the Delivery Points.
- (b) Subject to **Section 4.8**, NLH shall indemnify Muskrat pursuant to **Article 16**, for any Third Party Claim, and any Claims of any kind by the NLSO, caused by the purchase

and receipt by NLH, or the failure by NLH to take delivery of what would otherwise be Delivered Energy purchased hereunder and the transmission or failure to effect transmission of such Energy at and from the applicable Delivery Points.

4.7 **GHG Emissions and Credits**

- (a) NLH Owns Delivered Energy, GHG Credits - NLH shall acquire from Muskrat and thereafter own all GHG Credits related to the Delivered Energy concurrently with the delivery of the Delivered Energy to NLH and NLH may in its sole and absolute discretion sell such GHG Credits in whole or in part to any Persons.

- (b) Assignment to NLH of GHG Credits - To give effect to **Section 4.7(a)**, Muskrat hereby assigns to NLH, unconditionally and absolutely, all of its right, title and interest in and to all of the GHG Credits attributable to the Delivered Energy free and clear of any encumbrances. Such assignment shall be effective from time to time as and when such GHG Credits have been created and the associated Energy is delivered to NLH.

- (c) Changes to GHG Credits Rules - If any Authorized Authority adopts one or more programs with respect to the certification or regulation of Energy delivered pursuant to this Agreement from the MF Plant based on greenhouse gas emissions or other environmental standards, at the request of NLH acting reasonably, Muskrat shall make commercially reasonable efforts to apply for and/or register the MF Plant under such certification or regulation, provided NLH shall reimburse Muskrat on a pro rata basis (based upon the proportionate entitlement of NLH to Base Block Energy relative to all Energy produced from the MF Plant for the first 50 Operating Years) for all expenses incurred by Muskrat in connection with any such application, certification or regulation.

4.8 **Effect of Service Interruption**

If (a) the NLSO discontinues the receipt of Energy and Capacity from Muskrat pursuant to Section 5.5 of the GIA, or (b) Labrador Transco or the NLSO discontinues the receipt of Energy and Capacity upon the request of Muskrat as a result of a System Emergency or for reasons of safety, such discontinuance shall not be construed as a breach of contract by NLH of its obligations to take delivery of or effect the transmission of Energy and Capacity from Muskrat.

4.9 **Title**

NLH shall take title to the Delivered Energy upon delivery to the Delivery Points and upon such delivery, NLH shall receive title to all associated Ancillary Services and GHG Credits associated with the Delivered Energy.

ARTICLE 5
JOINT OPERATIONS COMMITTEE

5.1 **Establishment and Duration of JOC**

Coincident with the First Power Date, a Joint Operations Committee (“**JOC**”) for the MF Plant shall be established consisting of representatives appointed by each of Muskrat and NLH. From time to time Muskrat and NLH may appoint individuals to replace other representatives previously appointed.

5.2 **JOC Composition, Quorum, Duration and Procedures**

- (a) Composition - The JOC shall at all times be composed of two representatives appointed by each of Muskrat and NLH. Each of Muskrat and NLH shall notify the other of the identity of its members and shall make reasonable efforts to maintain continuity of its members on the JOC. Each of Muskrat and NLH shall designate one of its representatives on the JOC to be the chair and vice-chair, respectively. Where the chair or vice-chair is unable to act, he or she may from time to time delegate his or her responsibilities to another JOC representative of, respectively, Muskrat or NLH.
- (b) Quorum - Subject to **Section 5.4(k)**, the quorum for the transaction of business by the JOC shall be the chair and the vice-chair or their respective delegates.
- (c) Duration - The JOC shall be established on the First Power Date and shall continue until the termination of this Agreement.
- (d) Procedures - Except as otherwise provided for in this Agreement, the JOC shall establish procedures for the conduct of its affairs.

5.3 **Mandate of and Information to JOC**

- (a) Mandate - The JOC shall coordinate, review and approve all O&M Activities. The following matters shall be submitted for JOC approval (“**JOC Matters**”):
 - (i) Muskrat’s proposed Annual Maintenance Plan;
 - (ii) Muskrat’s proposed LTAMP for the MF Plant, updated periodically;
 - (iii) for each Operating Year, annual operating and capital budgets for O&M Costs, including monthly cashflows;
 - (iv) other items to be approved by the JOC from time to time; and
 - (v) prior to implementation by Muskrat, any material changes or updates to any of the foregoing.

- (b) Information to JOC - Muskrat shall, in a timely manner and on an ongoing basis from the First Power Date until the end of the Supply Period, submit to the JOC the following:
- (i) copies of material communications with Authorized Authorities relating to O&M Activities, including communications with environmental regulators, periodic regulatory reports and correspondence relating to disputes with Authorized Authorities;
 - (ii) annually, within 30 days after policy renewal, certificates of insurance or other appropriate evidence that the insurance required by **Article 11** is in force;
 - (iii) reports of O&M Activities with scope and detail established by the JOC from time to time;
 - (iv) inspection and condition reports completed by Muskrat's engineers, original equipment manufacturers, operating and maintenance contractors, Financing Parties' engineers, insurance providers' engineers or other Persons completing such reports;
 - (v) updates and revisions of the LTAMP;
 - (vi) updates on O&M Costs; and
 - (vii) such other information as the JOC may reasonably require.

The JOC shall review, consider and endeavour to reach consensus as to the JOC Matters submitted by Muskrat pursuant to this **Section 5.3(b)**. If the JOC reaches consensus on a JOC Matter, either initially or after revisions requested by the JOC, the JOC Matters will be considered approved by the JOC and Muskrat shall implement the O&M Activities and other matters referred to in the JOC Matters in the manner approved by the JOC. If the JOC fails to reach consensus on a JOC Matter, the issues preventing consensus shall be resolved pursuant to the Dispute Resolution Procedure.

- (c) O&M Standards - From time to time during the Supply Period, the JOC may determine the O&M Standards required by the JOC to be adopted, followed or maintained by Muskrat in carrying out the O&M Activities. Any such standards must comply with Good Utility Practice. Muskrat shall implement any such standards within such reasonable time as may be set by the JOC.
- (d) Approval Conditions Permitted - The JOC may approve any matters for which its approval is required under this Agreement subject to such conditions as it may direct, and it may also direct that amendments be made to any matters submitted to it for approval.

- (e) Support for Approvals - Muskrat shall cause all matters that are to be approved by the JOC under this Agreement to be brought before the JOC in a timely manner, and shall provide to the JOC all related background information and any other information requested by the JOC.

5.4 Meetings of JOC

- (a) Regular Meetings - The JOC shall meet not less frequently than semi-annually during the Commissioning Period and the Supply Period in accordance with the schedule determined by the JOC, or at such more frequent intervals as the JOC may decide from time to time.
- (b) Calling of Meetings - Either the chair or the vice-chair may call a meeting of the JOC by delivering a notice to the JOC members. Either Party may request a meeting of the JOC by delivering a notice to the chair or the vice-chair of the JOC to that effect. Upon receiving notice of a requested meeting, the chair or the vice-chair, as applicable, shall promptly call a meeting by delivering a notice of not less than five Business Days to the JOC members to that effect.
- (c) Waiver of Notice - Except as otherwise provided for in this Agreement, including those circumstances described in **Section 5.4(d)**, the notice periods set forth in **Sections 5.4(b)** and **5.4(f)** may only be waived with the unanimous consent of the JOC.
- (d) Abridgement of Notice Period - For any situations involving or potentially involving:
 - (i) the actual or imminent threat of loss of life or injury or damage to property or the environment; or
 - (ii) a required response to a notice contemplated by **Sections 5.4(b)** and **5.4(f)** that must be made prior to the expiry of such notice,

the advance notice period for calling a meeting of the JOC may be abridged to such period as is reasonable in the particular circumstances, and any such meeting shall be considered duly constituted.

- (e) Meeting Notice Particulars - Each notice of a meeting of the JOC shall contain:
 - (i) the date, time and location of the meeting; and
 - (ii) an agenda of the matters to be considered at the meeting together with sufficient information to permit the JOC members to properly and effectively consider the matters to be discussed at such meeting.
- (f) Additions to Agenda - A member of the JOC may, by notice to the other members given not less than three Business Days prior to a meeting of the JOC, add matters to the agenda for that meeting, provided sufficient information is provided with such

notice to permit the other JOC members to properly and effectively consider the matters referred to in such notice.

- (g) Non-Agenda Matters - At the request of a member of the JOC, and provided both the chair and the vice-chair or their designates consent, the JOC may, at any meeting of the JOC, consider and decide on any matter not otherwise on the agenda for that meeting.
- (h) Location of Meetings - Meetings of the JOC shall be held in St. John's, NL, or such other locations as may be determined by the JOC.
- (i) Chair's Duties for Meetings - With respect to meetings of the JOC, the chair's duties shall include:
 - (i) timely preparation and distribution of the notices of meetings contemplated by **Sections 5.4(b)** and **5.4(f)**, with draft agendas and supporting material;
 - (ii) organization and conduct of the meetings; and
 - (iii) preparation of written minutes of the meetings.

If the chair fails to perform any of his or her duties, such duties may be performed by the vice-chair.

- (j) Authority to Vote - The JOC shall operate on the basis of consensus, but in order to determine if consensus exists, votes may be required. The representatives of a Party on the JOC must be duly authorized to represent that Party with respect to any matter that is within the powers of and properly before the JOC. The Muskrat representatives and the NLH representatives shall separately determine the positions of Muskrat and NLH respectively, and each Party shall be entitled to one vote without any duty of care or fairness to the other Party. If the two positions are not or cannot be brought to agreement, consensus shall not have been achieved.
- (k) Failure to Achieve Quorum - If a quorum for a meeting of the JOC is not present at an otherwise duly constituted meeting of the JOC, that meeting shall be adjourned, but may be reconvened upon not less than five days' prior Notice given by any member of the JOC to the other members of the JOC, and at such adjourned meeting the JOC members attending shall constitute a quorum.
- (l) Advisors - Each Party may, at its cost, or as otherwise agreed by the Parties, invite to any JOC meeting such reasonable number of technical and other advisors it considers necessary or appropriate to address the matters being considered at the meeting.
- (m) Telephone or Video Conference Meetings - Participation in JOC meetings for purposes of determining a quorum and otherwise may be by telephone or other electronic telecommunication or video conference device that permits all Persons

participating in the meeting to hear and communicate with each other simultaneously, and all Persons so participating shall be considered present at that meeting for all purposes.

- (n) Minutes - The chair or the vice-chair presiding at a meeting of the JOC shall deliver to each member of the JOC draft minutes of each JOC meeting within 14 days following the meeting. The minutes shall be considered for approval at the next meeting of the JOC.

5.5 **Resolution in Writing**

An original, facsimile copy or other electronic image copy of a resolution of the JOC signed by the chair and the vice-chair or their respective designates (including by counterpart) shall be effective as if passed at a duly called meeting of the JOC.

5.6 **Decisions of JOC Binding**

Except as otherwise expressly provided in this Agreement, all decisions of the JOC shall be conclusive and binding on both Parties for all purposes.

5.7 **LTA-JOC**

NLH may, at its sole and absolute discretion, elect to require Muskrat to appoint a NLH delegate to the JOC-LTA as defined in and pursuant to the GIA. Upon NLH making such election, Muskrat shall appoint such NLH appointee to the JOC-LTA pursuant to Section 2.5 of the GIA.

ARTICLE 6
PERFORMANCE OF O&M ACTIVITIES

6.1 **Muskrat's Responsibilities**

From the First Power Date and thereafter until the end of the Supply Period Muskrat shall:

- (a) perform the O&M Activities;
- (b) exercise final Operational Control of the MF Plant, except as otherwise provided in this Agreement;
- (c) in the conduct of all O&M Activities considering the remaining term of this Agreement:
 - (i) apply methods and practices customarily applied in other similar circumstances;

- (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
 - (iii) comply with Reliability Standards;
 - (iv) comply with all regulatory requirements of the Authorized Authorities; and
 - (v) comply with Good Utility Practice;
- (d) except in response to a Safety Event or as otherwise necessary and appropriate for the MF Plant in accordance with Good Utility Practice (in which case Muskrat may take immediate action outside the Annual Maintenance Plan provided it makes confirmatory reports to the JOC as soon as practical thereafter), ensure that all O&M Activities are performed pursuant to the Annual Maintenance Plan approved by the JOC;
- (e) provide adequate, qualified, competent, and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations, including professional engineers and procurement, project management and operation and maintenance personnel;
- (f) obtain and maintain in good standing all required Regulatory Approvals;
- (g) comply with all Applicable Law, Operating Requirements to the extent applicable, Reliability Standards and relevant Regulatory Approvals;
- (h) protect the MF Plant from any damage caused by electrical faults or disturbances on the Bulk Electric System;
- (i) comply with valid requests from Authorized Authorities to produce all information relating to the MF Plant and this Agreement;
- (j) authorize NLH to test the MF Plant Ancillary Services and production Capacity in accordance with Reliability Standards from time to time upon reasonable notice; and
- (k) maintain and operate, at all times, remote monitoring and control facilities to enable the NLSO to continuously monitor and control the MF Plant from the Energy Control Centre including the requirement for the provision of Ancillary Services on the NL Transmission System.

6.2 **LTAMP**

- (a) Preparation and Approval of Plans - Muskrat shall prepare and maintain an LTAMP setting out the Sustaining Activities to take place in each Operating Year containing such information as may be reasonably required by the JOC.

- (b) Coordination - Muskrat shall co-operate with the NLSO to ensure that any planned maintenance outages associated with the LTAMP for the MF Plant and the NL Transmission System are coordinated in order to obtain efficiencies and to minimize overall impact of all maintenance on Reliability.

6.3 Maintenance Planning

- (a) On or before September 1 in each Operating Year in accordance with the NLH generation outage planning procedure, Muskrat shall deliver to NLH:
 - (i) a 10 Operating Year ahead maintenance outage plan for the MF Plant which may affect delivery of the Base Block Energy; and
 - (ii) its requirements for Planned Maintenance Periods that will result in the Contracted Capacity not being available in whole or in part and during which Reliability will be constrained.
- (b) NLH and Muskrat shall coordinate Planned Maintenance Periods and, to the extent known, repairs required by reason of Safety Events.
- (c) NLH shall, in accordance with its generation outage planning procedures, give notice to Muskrat of the periods in each Operating Year when the Contracted Capacity can be reduced to meet Muskrat's Planned Maintenance Periods requirements.
- (d) Muskrat shall notify NLH of Muskrat's chosen final Planned Maintenance Periods in accordance with NLH's generation outage planning procedures.
- (e) Muskrat shall deliver to NLH as soon as known, schedules of any unforeseen repairs required by reason of a Safety Event.
- (f) Preparation and Approval of Plans - Muskrat shall prepare the Annual Maintenance Plan for:
 - (i) the first Operating Year, and submit it to the JOC for approval not later than 18 months prior to the anticipated Commissioning Date; and
 - (ii) each subsequent Operating Year, and submit it to the JOC for approval during the eighth month of the prior Operating Year.
- (g) Coordination - Muskrat shall co-operate with the NLSO to ensure that the Annual Maintenance Plans for the MF Plant and the NL Transmission System are coordinated in order to obtain efficiencies and to minimize overall impact of all maintenance and Reliability.

ARTICLE 7
METERING AND DATA EQUIPMENT

7.1 **Metering Responsibility**

- (a) Installation of Metering Equipment - Muskrat shall supply, install, maintain, and pay for the Metering Equipment which shall be utilized to measure and record the Energy produced by the MF Plant or the CFLCo Plant and delivered to the LTA, including power quality parameters specified by NLH. Muskrat shall comply with all Applicable Law regarding the supply, installation and maintenance of the Metering Equipment and such Metering Equipment shall meet the applicable requirements established by Measurement Canada. Applicable requirements include, but are not limited to, ensuring the meters are sealed by Measurement Canada and that the re-seal/re-test of the meters is completed when the seal period expires. The Metering Equipment shall be Measurement Canada approved and Muskrat shall deliver to NLH the notice of approval number issued by Measurement Canada. Muskrat shall install and maintain at its cost a back up meter with the capability to record at least 45 days of data. Muskrat shall advise NLH of any changes to the Metering Equipment in advance or, if advance notice cannot be provided, within 48 hours of the change being made.

- (b) Adjustments If No Metering Equipment - If the Metering Equipment is not installed at a Delivery Point, appropriate adjustments shall be made for losses between the metering point and such Delivery Point in accordance with industry practice. Such losses shall be based on factory acceptance tests used to derive transformer resistance. If compensation for losses is used, such compensation method shall be agreed to by Muskrat and NLH and the resultant Energy losses calculated each Operating Month shall be itemized separately on the monthly invoice.

- (c) NLH Access to Metering Equipment - Muskrat shall provide NLH access to the Metering Equipment for the purposes of inspection and verification as NLH may reasonably request from time to time. Muskrat shall provide copies of all material documentation and approvals received from Measurement Canada, with respect to the Metering Equipment.

- (d) Approval of Metering Equipment - Muskrat shall submit the Measurement Canada notice of approval number and the specifications for the Metering Equipment to the NLSO for review and comment at least 60 calendar days prior to the anticipated First Power Date. If applicable, this shall include the calculation for the correction of Energy and Capacity losses between the metering point and the Delivery Point.

7.2 **Verification**

If either Party becomes aware of any deficiency in the proper operation of any Metering Equipment, it shall promptly notify the other. Muskrat shall be obligated to attend to such remedial measures regarding the Metering Equipment as may be required to rectify the deficiency, including the repair and replacement thereof. If the deficiency is of such a nature that

the amount of Energy and Capacity supplied and delivered is found to have been inaccurately measured or recorded, the Parties shall endeavour to reach an agreement as to the amount of Energy supplied during such period based on the reasonable estimates of each Party of the load conditions prevailing during such period.

ARTICLE 8
ACCESS, RECORDS, AUDITS, SAFETY & INTERCONNECTION

8.1 **Access to the MF Plant**

NLH shall have the right, upon reasonable advance notice to Muskrat, to access the MF Plant and the site thereof at all reasonable times for the sole purpose of examining the MF Plant or the construction thereof in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance notice to set forth the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the MF Plant and shall not compromise the safety of Persons or property. While accessing the MF Plant, all Representatives of NLH shall follow all rules and procedures established by Muskrat for visitors to the site including safety and security. The inspection of the MF Plant or the exercise of any audit rights or the failure to inspect the MF Plant or to exercise audit rights by or on behalf of NLH shall not relieve Muskrat of any of its obligations under this Agreement. No Muskrat Default will be waived or deemed to have been waived solely by any inspection by or on behalf of NLH. In no event will any inspection by NLH hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

8.2 **Records and Audits**

Each Party shall keep and maintain complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be kept and maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Construction Period and the Supply Period, including major maintenance records, life cycle management records, hydrological records and design and commissioning records, shall be retained for such periods; all other documents shall be retained for at least seven years. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate 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 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 the purposes of any such review of records provided that those employees or such auditor shall treat any information received as Confidential Information. 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.

8.3 Communications with Authorized Authorities

Each Party, with respect to the MF Plant, shall, upon written request by the other Party and to the extent permitted by Applicable Law, provide such other Party with copies of all communications and correspondence to any and all Authorized Authorities.

8.4 Safety

Muskrat shall have the right to suspend the delivery, and NLH shall have the right to suspend the acceptance, of all or a part of the Energy Scheduled by NLH for delivery pursuant to this Agreement without breaching this Agreement or incurring liability to the other 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. In the case of such suspension, Muskrat shall not be released of responsibility to deliver the undelivered portion of the Energy Scheduled by NLH pursuant to this Agreement as the amount of such undelivered Energy shall be NLH Deferred Energy, and be available to NLH as such.

8.5 GIA

Muskrat represents and warrants that it has entered into the GIA coincidentally with this Agreement and shall maintain the GIA in full force and effect during the Supply Period without amendment, unless consented to by NLH.

8.6 Interconnection

Upon reasonable Notice from NLH, Muskrat shall require Labrador Transco to enter into agreements for the interconnection of the MF Plant with the LTA and the LTA with the NL Transmission System as required by NLH acting reasonably.

**ARTICLE 9
INVOICING**

9.1 Reports, Statements and Invoices

- (a) Monthly Invoice - Muskrat shall prepare and deliver to NLH, on or before the fifth Business Day prior to the commencement of each Operating Month, an invoice for such Operating Month setting out the Base Block Payments to be paid by NLH in respect of such Operating Month. The invoice will include, as a separate line item, the Estimated O&M Costs for such Operating Month, and otherwise be accompanied by such detail and supporting documentation as reasonably required by NLH to review the calculations of the Estimated O&M Costs.
- (b) Monthly Meter Data Report - Muskrat shall prepare and deliver to NLH, within one Business Day after the end of each Operating Month, the hourly meter data from the Metering Equipment in an electronic format for Delivered Energy during such Operating Month.

- (c) Monthly Metering Statements - Muskrat shall prepare and deliver to NLH, on or before the second Business Day after the end of each Operating Month, a monthly metering statement for such Operating Month.

9.2 Error in Invoice

- (a) If an error is found in any invoice rendered, the necessary adjustment shall be made in the next invoice. If either Muskrat or NLH disputes, in good faith, any part of an invoice, such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Any payments that result from the resolution of such disputes shall be provided for in the next invoice following the date of such resolution. Absent manifest error in an invoice, NLH shall nevertheless pay to Muskrat the amount due as set forth in the invoice.
- (b) Either Muskrat or NLH may give written notice to the other of an error, omission or disputed amount in an invoice within 24 months after the invoice was issued, together with reasonable detail to support its claim. Except in the case of wilful misstatement or concealment, a previously issued invoice shall be deemed accurate after it has been issued, unless a Party has issued a written notice to the other disputing such invoice prior to the end of such period.

9.3 Set-Off

Other than as expressly set forth in this Agreement, neither Party may withhold, set-off or deduct from any amount otherwise payable under this Agreement to another Party.

9.4 Interest on Overdue Amounts

If NLH fails to pay on the due date any payment or any other amount payable to Muskrat pursuant to this Agreement (or fails to pay within 20 Business Days of demand any sum which is expressed to be payable on demand), NLH shall pay interest to Muskrat on such unpaid amount from the due date or, as the case may be, the date of demand, to the date of actual payment (after as well as before judgment) at the default rate of interest set forth in the Financing Documents.

**ARTICLE 10
TAXES**

10.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 10.1(c)**,

- (i) Muskrat shall pay or cause to be paid all Taxes on or with respect to the Delivered Energy arising prior to the Delivery Point;
 - (ii) NLH shall pay or cause to be paid all Taxes on or with respect to the Delivered Energy at and from the Delivery Point;
 - (iii) if Muskrat is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder prior to the Initial Financing being Paid in Full, Muskrat shall pay such amounts and NLH shall promptly reimburse Muskrat for such Taxes. If all amounts under the Initial Financing are Paid in Full, Muskrat shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse Muskrat for such Taxes to the extent not so offset;
 - (iv) if NLH is required by Applicable Law to remit or pay Taxes which are Muskrat's responsibility hereunder prior to the Initial Financing being Paid in Full, NLH shall pay such amounts and Muskrat shall promptly reimburse NLH for such Taxes. If all amounts under the Initial Financing are Paid in Full, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to Muskrat under this Agreement, and Muskrat shall promptly reimburse NLH 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 10.1(a)** and **10.1(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 from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 10.3**;

- (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 co-operate with the other Party to assist it in claiming, such input tax credit; and
 - (v) Muskrat is acting as agent for NLH for the purpose of making the supplies of the NLH External Market Sales pursuant to **Section 4.5(c)**, and the Parties shall, upon the request of one of the Parties, acting reasonably, make a joint election pursuant to section 177(1.1) of the Excise Tax Act for Muskrat to report all of the NLH External Market Sales and collect and remit all GST/HST applicable to such sales in accordance with the Excise Tax Act, and the Parties shall, upon the request of one of the Parties, acting reasonably, make any other elections required or beneficial under any other Applicable Law relating to Taxes applicable to the NLH External Market Sales.
- (d) Changes in Taxes - Subject to **Sections 10.1(b)** and **10.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) NLH is solely responsible for the payment of income taxes and HST payable by NLH; and
 - (ii) Muskrat is solely responsible for the payment of income taxes and HST payable by Muskrat.

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

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

10.3 **Invoicing Tax Requirement**

All billing statements or invoices (in either case referred to herein as an “**invoice**”), as applicable, issued pursuant to **Article 9** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as

permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

10.4 Payment and Offset

- (a) Subject to **Section 10.4(b)**, Taxes collectible by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 20 Business Days of receipt of an invoice.
- (b) Provided all amounts due under the Initial Financing are Paid in Full, a Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

10.5 HST Registration Status and Residency

- (a) Muskrat represents and warrants that it is registered for purposes of the HST and that its registration number is 8312 27830 RT0001, and undertakes to advise NLH of any change in its HST registration status or number.
- (b) NLH represents and warrants that it is registered for purposes of the HST and that its registration number is 1213 94928 RT0001, and undertakes to advise Muskrat of any change in its HST registration status or number.
- (c) Muskrat represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise NLH of any change in its residency status.
- (d) NLH represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Muskrat of any change in its residency status.

10.6 Cooperation to Minimize Taxes

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in

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

10.7 **Additional Tax Disclosure**

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

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is a non-resident of 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 a non-resident of 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 10.7**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 10.7(a)** through **10.7(c)**.

10.8 **Prohibited Tax Disclosure**

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

10.9 **Withholding Tax**

If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Laws, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party

hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, the Party shall deliver to the other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of the other Party.

10.10 **Tax Indemnity**

Each Party (in this **Section 10.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 10** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 10.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

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

10.11 **Additional Tax Indemnity**

If one Party (in this **Section 10.11** 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 10.11** 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 10.11** 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 10.11** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or

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

10.12 **Assignment**

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been approved in accordance with this Agreement, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such Assignment;
- (b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Article 10** and **Article 19**.

**ARTICLE 11
INSURANCE**

11.1 **Insurance Program**

Muskrat shall, as it deems necessary, acting reasonably, place or cause to be placed for the duration of this Agreement operational property and liability insurances as are normally necessary for a facility of similar size and design to the MF Plant and Good Utility Practice, including:

- (a) All Risk Course of Construction (Builder's Risk);
- (b) All Risk Property & Equipment Insurance;
- (c) Third Party Liability Insurance; and
- (d) such other coverages as may be deemed appropriate in the opinion of Muskrat, acting reasonably, giving due consideration to the inherent risks of the MF Plant and the factors mentioned in **Section 11.2**.

11.2 **Coverages, Limits, Deductibles and Exclusions**

In each case, the insurance shall provide for coverages, limits, deductibles, exclusions and other terms and conditions as may be appropriate for the MF Plant, giving due consideration to:

- (a) requirements of the Financing Documents;

- (b) the values at risk and the maximum loss exposures reasonably anticipated at the time the insurance coverage is placed;
- (c) exposures to third party liabilities;
- (d) commercial availability and commercially reasonable cost of such insurance;
- (e) the reasonable practices employed by similar entities and similar projects in Canada; and
- (f) Muskrat's financial ability and desire to retain or self-insure certain risks.

11.3 **Provisions to be Included in Insurance Policies**

All insurance procured by Muskrat pursuant to this **Article 11** shall:

- (a) name NLH, its Affiliates as appropriate, and their respective directors, officers and employees as named insureds with respect to the third party liability insurance policy referred to in this **Article 11**;
- (b) be at Muskrat's expense and will be primary, non-contributing with, and not excess of, any other insurance available to NLH;
- (c) provide for 30 days' prior notice to NLH in the event of cancellation or material change that reduces or restricts the Insurance provided that if insurers shall provide notice earlier than 30 days, Muskrat shall immediately advise NLH of same;
- (d) remain in full force and effect at all times during the Term;
- (e) be for the mutual benefit of Muskrat and NLH and their respective Affiliates; and
- (f) include a severability of interest clause whereby such policy would cover claims of one named insured against another named insured.

11.4 **Lender Requirements**

NLH shall co-operate fully with Muskrat and shall assist Muskrat in complying with obligations imposed by the Financing Parties relating to the insurance coverage provided pursuant to this **Article 11**, including naming the Financing Parties as first loss payees, and the use of insurance proceeds in the event of a catastrophic loss.

11.5 **Contractors**

Contractors, to the extent their contracts require them to procure insurance, shall be required to comply with such insurance provisions as may be required.

11.6 **Evidence of Insurance**

If requested by NLH, Muskrat shall provide satisfactory evidence of insurance procured by it pursuant to this **Article 11** in the form of a certificate of insurance when obtained and thereafter annually upon renewal of such insurance.

11.7 **Placement of Required Insurance**

If Muskrat fails to obtain or maintain any insurance required to be maintained by it hereunder, NLH may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of Muskrat.

11.8 **Effect of Failure to Insure**

Notwithstanding **Section 11.7**, none of the obligations of Muskrat in this Agreement shall be reduced, or in any way affected, or diminished in any respect, by a failure of Muskrat to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by a denial of coverage of any insurance, nor shall Muskrat be entitled to any indemnity or contribution as a result of any such failure to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by any denial of coverage of any insurance.

11.9 **Site Visits**

NLH shall provide to Muskrat evidence of liability insurance and automobile liability insurance in anticipation of any visits to any Muskrat facility including the MF Plant. NLH shall provide to Labrador Transco evidence of liability insurance and automobile liability insurance in anticipation of any visits to any Labrador Transco facility including the LTA.

11.10 **Corporate Policies**

It is understood and agreed that Muskrat may provide the coverage provided for in this Agreement through policies covering other assets and/or operations operated by Nalcor.

ARTICLE 12
DISPUTE RESOLUTION

12.1 **General**

- (a) **Dispute Resolution Procedure** - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set forth in **Schedule 5** (the "**Dispute Resolution Procedure**").
- (b) **Disputed Payment** - Subject to **Section 12.3**, if there is a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the undisputed portion of such payment.

- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 12**, without prejudice to any other Party's rights pursuant to this Agreement

12.2 **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 give Notice to 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 of the Claiming Party to promptly give Notice.
- (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

12.3 **Base Block Payments Not Affected**

If there is a Dispute concerning any Base Block Payments payable by NLH to Muskrat hereunder and at the time the Initial Financing has not been Paid in Full, NLH shall pay the whole of such Base Block Payments in full, prior to initiating any Dispute Resolution Procedure relating thereto, subject only to the right of NLH to be reimbursed by Muskrat if and as the Dispute Resolution Procedure may require. NLH agrees that any payment to be made to it as a result of a finding pursuant to Dispute Resolution Procedure that NLH should be reimbursed, shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents. All such amounts owing to NLH shall be subject to interest from the original due date to the date of actual payment (after as well as before judgment) at the Prime Rate plus 3%.

12.4 **Directions Under Dispute Resolution Procedure**

The Parties agree that the mediator, arbitrator, independent expert or tribunal, as applicable, pursuant to a Dispute under the Dispute Resolution Procedure shall, where the Dispute

is of a nature that could reoccur, be directed to include in its award a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

ARTICLE 13
TERM AND TERMINATION

13.1 **Term**

This Agreement shall become effective on the Effective Date and shall terminate on the date determined in accordance with **Section 13.2**.

13.2 **Termination of Agreement**

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

- (a) the end of the Supply Period; and
- (b) subject to the approval of the Financing Parties, the date set forth in a written agreement of the Parties to terminate.

13.3 **Extension of Supply Period**

- (a) The Supply Period shall be extended (i) to enable Muskrat to meet unfulfilled deliveries of the NLH Deferred Energy, (ii) by agreement of the parties, or (iii) to ensure that the Supply Period is not less than 50 years.
- (b) Unless this Agreement has been earlier terminated and provided NLH is not in default under this Agreement, no later than five years prior to the end of the Supply Period NLH may notify Muskrat if it wishes to continue to receive Energy, Capacity, Ancillary Services and GHG Credits attributable to the MF Plant subsequent to the Supply Period. Muskrat and NLH will then negotiate in good faith to agree upon the terms under which Muskrat will provide and NLH will purchase Energy, Capacity, Ancillary Services and GHG Credits attributable to the MF Plant after the Supply Period, including the price to be paid by NLH therefor. Unless expressly provided in this Agreement, if no agreement is reached by Muskrat and NLH, this Agreement shall not be extended, other than as contemplated in **Section 13.3(a)** and the matter shall not be referred to resolution pursuant to the Dispute Resolution Procedure.

13.4 **Effect of Termination of Agreement**

When this Agreement terminates:

- (a) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents that contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate

records and/or to comply with Applicable Law, which shall continue to be held in accordance with the provisions of **Schedule 7**);

- (b) neither Party shall have any obligation to the other Party in relation to this Agreement or such termination, except as set forth herein;
- (c) the obligations of a Party outstanding at termination shall survive until satisfied, and those provisions of this Agreement which expressly survive termination of this Agreement shall survive as expressly stated; and
- (d) Muskrat shall pay to NLH the fair market value of NLH Deferred Energy not yet delivered or sold.

**ARTICLE 14
DEFAULT AND REMEDIES**

14.1 Muskrat 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 Muskrat under this Agreement (a “**Muskrat Default**”):

- (a) Muskrat 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 NLH that such amount is due and owing;
- (b) Muskrat is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 14.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Muskrat of Notice thereof from NLH, unless the cure reasonably requires a longer period and Muskrat is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NLH;
- (c) any representation or warranty made by Muskrat in this Agreement is false or misleading in any material respect;
- (d) Muskrat 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; or
- (e) any Insolvency Event occurs with respect to Muskrat;
- (f) default by Muskrat in the performance of its obligations pursuant to the GIA; or
- (g) either Labrador Transco or Muskrat is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation

by Labrador Transco or Muskrat arising from an indemnity obligation set forth in the Financing Documents.

14.2 **NLH Remedies upon Muskrat Default**

- (a) General - Subject to **Section 4.2(d), 13.4, 14.6, 14.9** and **Article 17**, upon the occurrence of a Muskrat Default and at any time thereafter, provided NLH 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) NLH shall be entitled to exercise all or any of its rights, remedies or recourses available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourses available to NLH are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to **Section 4.2(d), 4.2(e)** and **Article 17**, NLH may recover all Losses suffered by NLH that result from a Muskrat Default, including, for the avoidance of doubt, any costs or expenses (including reasonable legal fees and expenses on a solicitor and own client basis) reasonably incurred by NLH to recover any amounts owed to NLH by Muskrat under this Agreement.

14.3 **Failure to Defer**

NLH's right to receive NLH Deferred Energy or to receive payment in accordance with **Section 4.5(d)** shall be NLH's sole and exclusive right, remedy or recourse for the failure by Muskrat to deliver or NLH to accept any part of the Energy Scheduled for delivery in accordance with this Agreement to which NLH is otherwise entitled resulting from a Forgivable Event.

14.4 **NLH Events of Default**

Except to the extent excused by a Forgivable Event, which Forgivable Event at all times shall not excuse NLH's obligation to make the Base Block Payments, the occurrence of one or more of the following events shall constitute a default by NLH under this Agreement (an "**NLH Default**"):

- (a) NLH 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 Notice from Muskrat that such amount is due and owing;

- (b) NLH is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 14.4(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NLH of Notice thereof from Muskrat, unless the cure reasonably requires a longer period and NLH is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Muskrat;
- (c) any representation or warranty made by NLH in this Agreement is false or misleading in any material respect;
- (d) NLH 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; or
- (e) any Insolvency Event occurs with respect to NLH.

14.5 Muskrat Remedies upon NLH Default

- (a) General - Subject to **Sections 13.4, 14.3** and **14.8**, upon the occurrence of an NLH Default and at any time thereafter, provided Muskrat 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) Muskrat shall be entitled to exercise all or any of its rights, remedies or recourses available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourses available to Muskrat are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to **Article 17**, Muskrat may recover all Losses suffered by Muskrat that result from an NLH 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 Muskrat to recover any amounts owed to Muskrat by NLH under this Agreement.

14.6 Muskrat's Material Default

During the Supply Period, Muskrat grants to NLH the rights set forth in this **Section 14.6** provided that NLH assumes the obligations applicable to it in this **Section 14.6**.

- (a) Each time during the Supply Period, if a default notice is provided under the Step-In Agreement or if as a result of a Muskrat Default, the PPA Services cannot be

provided, in whole or in part, to NLH for 24 consecutive hours or 24 non-consecutive hours in any seven day period (each a “**Muskrat Material Default**”), then, NLH may give Notice that it intends to invoke its rights under this **Section 14.6(a)** (each a “**Muskrat Material Default Notice**”). If, within two days from the delivery of a Muskrat Material Default Notice, the Muskrat Material Default is not cured to the satisfaction of NLH acting reasonably, NLH may, at the date specified in such Muskrat Material Default Notice, assume Operational Control of the MF Plant and if it does so, NLH shall be entitled to the corresponding rights and shall assume the corresponding obligations of Muskrat under this Agreement, in accordance with **Section 14.6(b)**. Notwithstanding any Dispute that may be initiated by Muskrat concerning the determination of a Muskrat Material Default, NLH shall be entitled to assume Operational Control of the MF Plant. If the Dispute Resolution Procedure determines that Muskrat had not committed a Muskrat Material Default, then NLH shall return, and Muskrat shall assume, Operational Control of the MF Plant in accordance with **Section 14.6(c)**, mutatis mutandis. NLH shall pay to Muskrat any Losses incurred by Muskrat resulting from NLH’s improper assumption of Operational Control.

- (b) If NLH assumes Operational Control pursuant to **Section 14.6(a)**, Muskrat shall immediately provide to NLH all necessary information, passwords, access and keys necessary for NLH to assume Operational Control of the MF Plant, and shall provide all assistance reasonably necessary to assist transition to NLH of Operational Control. Upon assumption by NLH of Operational Control of the MF Plant pursuant to **Section 14.6(a)**, and thereafter until NLH returns Operational Control of the MF Plant pursuant to **Section 14.6(c)**:
- (i) NLH shall have the right to perform the O&M Activities if it so elects by Notice to Muskrat, and if it so elects, it shall perform the O&M Activities in accordance with Good Utility Practice;
 - (ii) NLH shall have the right to enforce and enjoy all of the rights that Muskrat has or may have under this Agreement in respect of such Operational Control in the place of Muskrat;
 - (iii) Muskrat shall continue to perform all its obligations under this Agreement which do not constitute Operational Control or which NLH does not elect to perform in accordance with **Section 14.6(b)(i)**;
 - (iv) subject to the limitations of the MF Plant, NLH shall perform Operational Control and the O&M Activities, to the extent it has elected to perform the O&M Activities pursuant to **Section 14.6(b)(i)**, in a manner which enables Muskrat to fulfill its obligations under the ECA and any energy supply contracts permitted pursuant to this Agreement as Muskrat may conclude from time to time;
 - (v) NLH shall be liable to and indemnify Muskrat for Muskrat’s Losses resulting from NLH exercising Operational Control of the MF Plant or performing the

O&M Activities, during such period, but only to the extent that same result from (A) NLH's breach of **Section 14.6(b)(iv)** or (B) NLH's wilful acts or omissions or NLH's gross negligence;

- (vi) Muskrat shall pay to NLH all of NLH's costs and expenses in performing O&M Activities while NLH has Operational Control of the MF Plant; and
 - (vii) in order to ensure non-interruption of the Base Block Payments prior to the Initial Financing being Paid in Full, costs and expenses paid to NLH pursuant to **Section 14.6(b)(vi)** shall be included in O&M Costs, which NLH shall continue to pay as part of the Base Block Payments.
- (c) At any time following each Muskrat Material Default where NLH assumes Operational Control of the MF Plant and performs O&M Activities pursuant to this **Section 14.6**, NLH may return Operational Control of the MF Plant to Muskrat on not less than five Business Days Notice. Upon the date specified in each such Notice, NLH shall immediately provide Muskrat all necessary information, passwords, access and keys necessary for Muskrat to resume Operational Control of the MF Plant, whereupon Muskrat shall assume Operational Control of the MF Plant and perform all of its obligations under this Agreement, including the continued performance of those performed by NLH while it had assumed Operational Control of the MF Plant.
- (d) Security Interest - As security for the obligations of Muskrat to NLH pursuant to this Agreement, Muskrat shall enter into a general security agreement in the form of **Schedule 6** and grant to NLH a security interest in the MF Plant within the meaning of the *Personal Property Security Act* (Newfoundland and Labrador). For clarity, the security interest granted by Muskrat shall in all respects be subject and subordinate to the security interests granted by the Financing Documents.

14.7 Defaults and Remedies under the GIA Affecting NLH

In consideration of the mutual covenants set forth below:

- (a) Muskrat hereby assigns to NLH and NLH accepts the rights and obligations set forth in Sections 15.5, 15.6, 15.7 and 15.8 of the GIA to assume Operational Control of the LTA in the event of a default by Labrador Transco as set forth therein.
- (b) Muskrat hereby assigns to NLH and NLH accepts a security interest in the LTA as set forth in Section 15.6(d) of the GIA to securitize Losses of Muskrat and NLH arising from the circumstances described in Section 15.6(a) of the GIA;
- (c) Muskrat hereby assigns to NLH and NLH accepts the rights and obligations set forth in Section 15.8 of the GIA to pay the LTA Redemption Value portion of the Redemption Value to the benefit of Labrador Transco in the events described therein; and

- (d) NLH acknowledges that failure to make payment in Section 15.8(a)(i) of the GIA may result in an agent of a financing party under the initial financing of the LTA exercising rights pursuant to one or more of the step-in agreements appended to the GIA.

14.8 Muskrat Specific Remedies upon NLH Failure to Make Base Block Payments

- (a) Failure to make Base Block Payments - If NLH is in default of its obligation to make the Base Block Payments and provided Muskrat is in material compliance with its obligations under this Agreement, Muskrat may give Notice (“**14.8 Notice**”) to NLH that it intends to invoke its rights under this **Section 14.8(a)**. If, within 10 days from the delivery of such 14.8 Notice, NLH has not cured such default and has not paid to Muskrat all Losses arising from such default:
 - (i) NLH shall pay to Muskrat as liquidated damages a lump sum amount equal to the Redemption Value (as at the date of payment of such amount) prior to the later of (A) 180 days following receipt of the 14.8 Notice, or (B) completion of any Remedies Consultation Period arising from such non-payment;
 - (ii) on receipt by Muskrat of the payment of the Redemption Value pursuant to **Section 14.8(a)(i)**:
 - (A) Muskrat shall immediately remit such payment to the appropriate Financing Parties with respect to the Initial Financing causing the Initial Financing to be Paid in Full;
 - (B) Muskrat shall recalculate the future Base Block Capital Costs Recovery pursuant to **Schedule 1** to reflect payment of the Redemption Value and the future Base Block Payments shall be adjusted accordingly;
 - (C) the payment of the Redemption Value by NLH to Muskrat shall be Muskrat’s sole and exclusive right, remedy and recourse with respect to Losses attributable to repayment of the Initial Financing portion of the Base Block Payments; and
 - (D) subject to **Section 14.8(a)(ii)(C)**, nothing in this **Section 14.8** shall limit or impair Muskrat’s right at law, equity or under this Agreement to seek compensation for Losses arising from failure to pay the full Base Block Payments as provided for in this Agreement.
 - (iii) To the extent any damages required to be paid under this **Section 14.8(a)** are expressly stated to be liquidated damages, NLH and Muskrat 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 or amount of such Losses. Each of the Parties agree that such liquidated damages are a genuine pre-

estimate of damages, are not a penalty, and are intended to protect the Parties from uncertainties. The obligation of a Party to pay and of a Party to accept such liquidated damages, as applicable, shall be legally enforceable and binding on the Parties.

- (b) NLH acknowledges failure to make payment pursuant to **Section 14.8(a)(i)** may result in an Agent Party (as such term is defined in the Step-In Agreement) exercising rights pursuant to the Step-In Agreement.

14.9 **Equitable Relief**

Prior to the Initial Financing being Paid in Full, no Party shall have any right, remedy or recourse to terminate this Agreement for any reason, without the consent of the Financing Parties. Subject to the foregoing sentence, nothing else in this **Article 14** will limit or prevent a Party from seeking equitable relief, including specific performance or a declaration to enforce another Party's obligations under this Agreement.

ARTICLE 15
FORCE MAJEURE AND CURTAILMENT

15.1 **Effect of Invoking Force Majeure and Notice**

- (a) If by reason of a Force Majeure event, a Party is not reasonably able to fulfill an obligation, other than an obligation to pay or spend money including **Section 4.2(d)**, in accordance with the terms of this Agreement, then such Party shall:
 - (i) forthwith provide Notice to the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
 - (ii) subject to **Sections 14.4(a)** and **Article 17**, be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the failure 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.
- (b) Notwithstanding **Section 21.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Parties 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 telephone and other electronic contact information to the other for the purposes of this Section prior to the Effective Date. Either Party may change such contact information from time to time by giving Notice of such change to the other Party in accordance with **Section 21.1**.

15.2 **Allocation of MF Plant Output**

If the MF Plant is unable because of a Forgivable Event to generate Energy and Capacity at the MF Plant Capacity in any hour during which Energy has been Scheduled by NLH for delivery pursuant to this Agreement, then to the extent the MF Plant is able to generate any Energy and Capacity during such hour, Muskrat shall allocate the available Energy output from the MF Plant on the basis of the following priorities:

- (a) Energy deliveries in respect of all non-firm or interruptible sales from the MF Plant shall be curtailed first; and
- (b) to the extent that the Curtailments described in **Section 15.2(a)** are insufficient to resolve a shortage in available Energy or Capacity, deliveries in respect of all firm or non-interruptible sales from the MF Plant, including those in respect of the Commissioning Period Energy, Base Block Energy, Supplemental Block Energy, the NS Block and Contracted Commitments, shall be curtailed next on a pro-rata basis, based on the scheduled delivery at the time of Curtailment for all subsequent hours.

15.3 **No New Contracted Commitments During a Curtailment**

Musktrat shall not Schedule or enter into any Contracted Commitments during the expected period of any Curtailment referred to in **Section 15.2** to the extent that such sales could affect the Curtailment priority and the consequential effect on the delivery of the Energy to the Delivery Points.

ARTICLE 16 **LIABILITY AND INDEMNITY**

16.1 **Musktrat Indemnity**

- (a) Muskrat shall indemnify, defend, reimburse, release and save harmless NLH and its Representatives, and the successors and permitted assigns of each of them, ("**NLH Group**") from and against, and as a separate and independent covenant agrees to

be liable for, all Claims (including those that may be brought against any member of the NLH Group by or in favour of a third party (including those Claims arising in favour of or brought by or on behalf of any member of the Muskrat Group)) based upon, in connection with, relating to or arising out of:

- (i) any inaccuracy or breach of any representation or warranty made by Muskrat in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of Muskrat in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence or wilful misconduct by or on behalf of any member of the Muskrat Group occurring in connection with, incidental to or resulting from Muskrat's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.
- (b) Notwithstanding **Section 16.1(a)**, Muskrat shall have no obligation to indemnify, defend, reimburse, release or save harmless any member of the NLH Group in respect of, or to be liable for, Claims
- (i) to the proportionate extent that such Claims result from the gross negligence or wilful misconduct of any member of the NLH Group; or
 - (ii) in respect of Losses to the personal property, facilities, equipment, materials or improvements of any member of the NLH Group.

16.2 **NLH Indemnity**

- (a) NLH shall indemnify, defend, reimburse, release and save harmless Muskrat and its Representatives, and the successors and permitted assigns of each of them, ("**Musktrat Group**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any member of the Muskrat Group by or in favour of a third party (including those Claims arising in favour of or brought by or on behalf of any member of the NLH Group)) based upon, in connection with, relating to or arising out of:
- (i) any inaccuracy or breach of any representation or warranty made by NLH in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of NLH in this Agreement or any other document or instrument delivered pursuant to this Agreement; or

- (iii) any gross negligence or wilful misconduct by or on behalf of any member of the NLH Group occurring in connection with, incidental to or resulting from NLH's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.
- (b) Notwithstanding **Section 16.2(a)**, NLH shall have no obligation to indemnify, defend, reimburse, release or save harmless any member of the Muskrat Group in respect of, nor to be liable for, Claims
 - (i) to the proportionate extent that such Claims result from the gross negligence or wilful misconduct of any member of the Muskrat Group; or
 - (ii) in respect of Losses to the personal property, facilities, equipment, materials or improvements of any member of the Muskrat Group.

16.3 **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 the MF Plant (including, with respect to any member of the Muskrat Group, such property of such member of the Muskrat Group, and, with respect to any member of the NLH Group, such property of such member of the NLH Group), howsoever incurred.

16.4 **Indemnification Procedure**

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Parties and the other Persons as set forth in **Sections 16.1** or **16.2**, as applicable, (each an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 16.4**.
- (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. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"). The failure to promptly give the Indemnitor Notice 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 of the Indemnified Party to promptly give Notice.
- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor 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 Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor 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 Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified 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.

- (d) 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 16.4** 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.

- (e) 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 16.4(i)**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of 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.

- (g) 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.
- (h) Rights Cumulative - Subject to the limitations contained in this Agreement, the right of any Indemnified Party to the indemnification provided in this Agreement 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.
- (i) 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 the Indemnitor and an Indemnified Party and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (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 participate in the defence of such Third Party Claim on behalf of the Indemnified Party, and all other provisions of this Section shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

16.5 **Insurer Approval**

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured claim in accordance with the insurance coverage requirements set forth in **Article 11**, 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 17
LIMITATION OF DAMAGES

17.1 **Limitations and Indemnities Effective Regardless of Cause of Damages**

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 14** and **Article 16** of this Agreement shall apply to any and all Claims.

17.2 **No Consequential Loss**

Notwithstanding any other provision of this Agreement, in no event shall:

- (a) Muskrat or any other member of the Muskrat Group or any of the respective Affiliates be liable to NLH or any other member of the NLH Group, or
- (b) NLH or any member of the NLH Group be liable to Muskrat or any member of the Muskrat Group;

for a decline in market capitalization, 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 Muskrat Group or the NLH Group, or any of their respective Affiliates, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 17.2**. For the purposes of this **Section 17.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

17.3 **Insurance Proceeds**

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (a) any insurance proceeds received or entitled to be received in relation to the Claim, and (b) 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.

17.4 **Net Present Value**

Except as provided for in **Section 14.8**, in no other event shall NLH be required to pay the net present value of the Base Block Payments due to be paid by NLH to Muskrat pursuant to

the terms of this Agreement. To the extent that Base Block Payments at any time funds debt service of Muskrat or Labrador Transco, only such portion of debt service shall be so funded as constitutes interest, fees and the instalment of principal which are due or about to become due as at such time; and for greater certainty there shall be no accelerated principal payable.

**ARTICLE 18
CONFIDENTIALITY**

18.1 Obligations of Confidentiality

The provisions of **Schedule 7** shall apply to Confidential Information.

18.2 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 19
ASSIGNMENT AND CHANGE OF CONTROL**

19.1 Muskrat Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Section 19.1(d)**, Muskrat shall not assign its interest or rights under this Agreement, the GIA, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Muskrat Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the Muskrat Rights by Muskrat unless such assignment includes all of the Muskrat Rights and Muskrat obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Muskrat Rights.
- (c) Change of Control - A change of Control of a Muskrat Affiliate Assignee that would result in such Muskrat Affiliate Assignee no longer being an Affiliate of Muskrat will be deemed to be assignment of the Muskrat Rights in contravention of this **Section 19.1**.
- (d) Consent Requirement - An assignment of the Muskrat Rights to a Person other than an Affiliate of Muskrat, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of NLH and Labrador Transco.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 19.1** will be null and void.

19.2 **NLH Assignment Rights**

- (a) General - NLH shall not assign this Agreement, its interest or rights hereunder, the GIA, any Claim or any other agreement relating to any of the foregoing.
- (b) Non-Permitted Assignment - Any purported assignment in contravention of this **Section 19.2** will be null and void.

ARTICLE 20
REPRESENTATIONS AND WARRANTIES

20.1 **Muskrat**

Muskrat represents and warrants to NLH that, as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of NL 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 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 it for its 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 its 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 a “non-resident” within the meaning assigned by the Income Tax Act.

20.2 **NLH**

NLH represents and warrants to Muskrat that, as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of NL 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 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) each one of 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 it for its 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 its 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 a “non-resident” within the meaning assigned by the Income Tax Act.

ARTICLE 21
MISCELLANEOUS PROVISIONS

21.1 **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:

(a) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention:
Fax:
Email:

(b) to Muskrat:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15000, Station A
St. John's, NL A1B 0M4
Attention:
Fax:
Email:

(c) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL A1B 0M7
Attention:
Fax:
Email:

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, be deemed to have been given or made on the day it was successfully transmitted 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 each other Party.

21.2 **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.

21.3 **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.

21.4 **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.

21.5 **Announcements**

No announcement with respect to this Agreement shall be made by a 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 any 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. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

21.6 **Relationship of the Parties**

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

21.7 **Further Assurances**

Each Party 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.

21.8 **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, each Party shall negotiate in good faith and execute 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.

21.9 **Time of the Essence**

Time shall be of the essence.

21.10 **Amendments**

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by each Party. Until such time as the Initial Financing is Paid in Full, without the written consent of the Collateral Agent, no amendment may be made to:

- (a) the definitions:
 - (i) in **Section 1.1** of “Acquiror”, “Base Block Capital Costs Recovery”, “Base Block Energy”, “Base Block Payments”, “Collateral Agent”, “Commissioning Date”, “Financing”, “Financing Documents”, “Financing Parties”, “Force Majeure”, “Forgivable Event”, “Funding Vehicle”, “Initial Financing”, “LTA Payments”, “LTA Redemption Value”, “Paid in Full”, “Qualified Assignee”, “Redemption Value”, “Supply Period”, or
 - (ii) that are used in a definition referred to in **Section 21.10(a)(i)**; or
- (b) **Articles 13, 14, 15, 16, 17** or **19**; or
- (c) **Sections 2.1, 4.2, 21.10** or **21.14**; or
- (d) **Schedules 1** or **2**.

21.11 **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 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 such Party or otherwise reduce the obligations of the Party receiving such consent or approval.

21.12 **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.

21.13 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties, including the payment of any amounts due under **Article 4, Article 10, Article 11, Article 12, Section 13.4(d)** and **Section 14.8**. 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.

21.14 **Step-In Agreement**

On the written request of a Financing Party, the Parties agree to execute and deliver the step-in agreement in favour of the Financing Parties substantially in the form of **Schedule 7**. (the "**Step-In Agreement**").

21.15 **Successors and Assigns**

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

21.16 **Crown not an Affiliate**

The NL Crown shall be deemed to not be an Affiliate of any Party hereto.

[Remainder of this page intentionally left blank.]

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

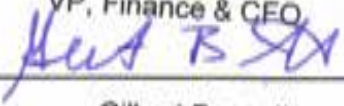
NEWFOUNDLAND AND LABRADOR HYDRO

By: 
Name: Robert Henderson
Title: VP, Newfoundland and Labrador Hydro

By: 
Name: Paul Humphries
Title: VP Systems Operations + Planning
We have authority to bind the corporation.

MUSKRAT FALLS CORPORATION

By: 
Name: Derrick Sturge
Title: VP, Finance & CEO

By: 
Name: Gilbert Bennett
Title: Vice President
We have authority to bind the corporation.

POWER PURCHASE AGREEMENT

SCHEDULE 1

BASE BLOCK CAPITAL COSTS RECOVERY

SCHEDULE 1
BASE BLOCK CAPITAL COSTS RECOVERY

Section 1 Definitions

In this **Schedule 1**:

“Assigned IRR” means **8.4%**;

“BB” means **Base Block Energy**;

“Base Block Capital Costs Recovery” or **“BBCR”** means the recovery over the Supply Period of the following costs, without duplication:

- (a) Development Capital Costs, which shall provide for the repayment of principal under the Financing and the return of equity capital to the equity holder;
- (b) Development Financing Costs; and
- (c) distributions to equity holders sufficient to enable Muskrat to achieve its Assigned IRR;

“Base Block Capital Costs Recovery Adjustment” or **“BBCRA”** has the meaning set forth in **Section 4** of this **Schedule 1**;

“Base Block Capital Supply Price” or **“BBCSP”** has the meaning set forth in **Section 5** of this **Schedule 1**;

“Base Year” means 2013 and **“by”** shall be construed accordingly;

“Escalation Factor” or **“ESC”** means **2%**;

“IRR” means the internal rate of return on equity capital earned by Muskrat’s equity investor over the period beginning with Sanction and ending at the end of the Supply Period, the IRR being the percentage discount rate which, if applied to the series of equity cash flows over the period beginning with Sanction and ending at the end of the Supply Period including all equity investments and distributions to equity, results in a discounted value of zero;

“M” means the number of months in an Operating Year;

“m” means the value attributable to a month within a given Operating Year;

“y” means the value attributable to a given Operating Year; and

“^” means raised to the power of.

Section 2 Introduction

This **Schedule 1** sets out the methodology for calculation of the Base Block Capital Costs Recovery. The result of these calculations is set forth in **Appendix A** to this **Schedule 1** for illustrative purposes. Base Block Capital Costs Recovery calculations are performed from time to time in a manner set forth in **Section 5** of this **Schedule 1**.

Nothing in this **Schedule 1** modifies the provisions in **Article 3** of this Agreement concerning Energy and Capacity management, nor does the actual delivery of Energy from Muskrat to NLH pursuant to **Article 3** of this Agreement affect the Base Block Capital Costs Recovery.

Base Block Capital Costs Recovery is a dollar value applicable to and recovered in each Operating Year.

The calculation and implementation of the Base Block Capital Costs Recovery develops from the Effective Date through the Commissioning Period and the Supply Period as follows:

Period	Base Block Capital Costs Recovery Change?	Money Change Hands?
Effective Date to immediately before Commissioning Period	Yes, prospectively to reflect changes in amount and timing of Development Capital Costs, Development Financing Costs, the prospective terms and conditions for the Financing during the Supply Period, and prospective Commissioning Date	No
Commissioning Period	Yes, prospectively to reflect changes in amount and timing of Development Capital Costs, Development Financing Costs, the prospective terms and conditions for the Financing during the Supply Period, prospective Commissioning Date, and any Commissioning Period Block Payments	Yes if Commissioning Period Block purchased by NLH and if so, Commissioning Period Block Payments pursuant to Section 4.1
Supply Period	No	Yes, Base Block Capital Costs Recovery

Prior to commencement of the Commissioning Period, no payments are made under the Agreement. The Base Block Capital Costs Recovery is calculated from time to time (as set forth in **Section 3** through **Section 5** of this **Schedule 1**) on a prospective basis to reflect changes in the amount and timing of Development Capital Costs and Development Financing Costs, the prospective terms and conditions for the Financing during the Supply Period, and the projected Commissioning Date.

Throughout the Commissioning Period, Commissioning Period Payments will be made in accordance with **Section 4.1**. The Base Block Capital Costs Recovery continues to be recalculated as necessary on a prospective basis reflecting the amount and timing of Development Capital Costs and Development Financing Costs, the prospective terms and conditions for the Financing during the Supply Period, the projected Commissioning Date and the amount and timing of any Commissioning Period Payments (which are applied to reduce Development Capital Costs in accordance with **Section 4.1(c)**).

The Base Block Capital Costs Recovery is recalculated on or about the Commissioning Date. The Base Block Capital Costs Recovery calculation is at such time fixed based on final determination of Development Capital Costs (net of any Commissioning Period Block Payments), Development Financing Cost, the terms and conditions of the Financing during the Supply Period, and the Commissioning Date. Should final Development Costs and Development Financing Costs, including claims, differ from those used in the calculation as at the Commissioning Date, the Base Block Capital Costs Recovery will be revised prospectively for the remainder of the Supply Period. The Base Block Capital Costs Recovery does not change thereafter, subject to **Section 4** of this **Schedule 1**.

Section 3 Base Block Capital Costs Recovery Calculation Based On Base Block Energy

The Base Block Capital Costs Recovery in each Operating Year, in dollars, is calculated prior to the Commissioning Date in the first instance (and subject to subject to **Section 4** of this **Schedule 1**) as:

- The Base Block Energy value in each such Operating Year (in GWh); times
- The Base Block Capital Supply Price applicable to such Operating Year (in dollars per MWh); times
- 1,000; and
- The amount attributable to a given month within the Operating Year is this value divided by the number of months in that Operating Year.

Algebraically (and before consideration of the provisions of **Section 4** of this **Schedule 1**):

$$\text{BBCCR}_y = \text{BB}_y \times \text{BBCSP}_y \times 1,000; \text{ and}$$

$$\text{BBCCR}_m = \text{BBCCR}_y \div \text{M}_y$$

Section 4 Base Block Capital Costs Recovery Adjustment

If, in any month, the Base Block Capital Costs Recovery is projected to be insufficient to enable Muskrat to meet all of its obligations under applicable Financing Documents, the recovery for Base Block Capital Costs Recovery shall be adjusted to enable Muskrat to meet all its obligations in such month. Any such adjustments will be a Base Block Capital Costs Recovery Adjustment and shall always be a positive amount.

For as long as such Base Block Capital Costs Recovery Adjustment remains unreimbursed as described below, the balance of such unreimbursed Base Block Capital Costs Recovery Adjustment will accrue interest at a rate equal to NLH's prevailing regulated cost of capital.

Base Block Capital Costs Recovery Adjustment will be reimbursed to NLH, subject to availability of funds and to the provisions of the Financing Documents. Such reimbursements (including reimbursement of accrued interest) will be considered Base Block Capital Costs Recovery Adjustment and shall always be a negative amount. If, in any period, Muskrat is unable to reimburse NLH fully as described above, the obligation to do so will carry over to subsequent periods.

Therefore, including Base Block Capital Costs Recovery Adjustment:

$$\text{BBCCR}_m = \text{BBCCR}_y \div \text{My} + \text{BBCCRA}_m$$

Recognizing that any LTA Capital Costs Recovery Adjustments payable by Muskrat to Labrador Transco as contemplated by Section 4 of Schedule 1 of the GIA, are payable by NLH to Muskrat as O&M Costs under this Agreement, and that any such LTA Capital Costs Recovery Adjustment shall accumulate interest at a rate equal to NLH's prevailing regulated cost of capital; immediately upon receipt by Muskrat from Labrador Transco, LTA Costs Recovery Adjustments will be reimbursed to NLH, subject to availability of funds and to the provisions of the Financing Documents.

NLH shall not rely on this **Section 4** for the purposes of defraying or reallocating any portion of the O&M Costs payable under this Agreement.

Section 5 Derivation of the Base Block Capital Supply Price

The BBCSP is an escalating supply price in dollars per MWh applied to Base Block Energy for the sole purpose of calculating the Base Block Capital Costs Recovery. The BBCSP is subject to escalation at the Escalation Factor each January 1 with the first such escalation being on January 1 of the first Operating Year after the Base Year.

$$\text{BBCSP}_y = \text{BBCSP}_{by} \times (1 + \text{ESC})^{(y - by)}$$

The BBCSP will be derived using an agreed financial model to be finalized prior to funding under the Financing, and two identical copies of which will be stored on compact discs or other storage medium as agreed by the Parties, each disc or other digital storage medium identified as "Muskrat Base Block Capital Costs Recovery Calculation [INSERT FUNDING DATE], **Schedule 1** to the Power Purchase Agreement between Newfoundland and Labrador Hydro and Muskrat Falls Corporation made effective November 29, 2013" each disc initialed by authorized representatives of Muskrat and NLH.

This financial model derives the BBCSP as at the Base Year (BBCSP_{by}) which enables Muskrat to achieve its Assigned IRR. Calculations in the financial model will conform to applicable provisions of the Financing Documents. The BBE, Assigned IRR, Base Year, Escalation Factor and maximum debt:equity ratio of 65:35 are not subject to change after the Effective Date. The inputs to the

financial model that may vary between the Effective Date and the Commissioning Date are as follows:

Tab	Line/cell	Description	Source
Control	F11, F21	Supply price optimization inputs	Muskrat model operator
Control	M73 - M77	Cost overrun apportionment – part of IRR optimization	
AS	F47	COREA IRR mode	
AS	F31	Reporting date	Muskrat model operator
AS	F14, F16, F18, F20, F22, F24	Commissioning date	Muskrat, as verified by the Independent Engineer or actual date
AS	F46	Mark-to-Actual toggle	Muskrat model operator
AS	F50	Interest on DSRA and LRA	Muskrat assumption, based on financial market forward projections
AS	F74, F76, F80, F81, F82, F83, F85, F86	SDN parameters	Muskrat, Financing Documents
ASM	R8 – T705	SDN series	Muskrat, Financing Documents
AS	F98, F119, F140	Interest rate on BSF	Muskrat assumption, based on financial market forward projections
ASM	AB8 – AC705	Capex cash flow series	Muskrat, as verified by the Independent Engineer
ASM	AF8 – AG705	Innu payments	Muskrat
ASM	AH8 – AH705	Revenue before Commissioning	Muskrat
ASM	AJ8 – AJ705	Interest earned on Bond Holding Account/Working Capital Reserve	Muskrat financial reporting

Tab	Line/cell	Description	Source
ASM	AK8 – AS705	Interest earned on deposits – BSF, DSEA, LRA, DSRA, cash balances (actuals)	Muskrat forecast assumption
IrA	Lines 11 and 12	Interest rates to be used on short term deposits during construction phase (calculated)	Muskrat, from financial market forecasts

The formulae and amounts contained in the financial model have been agreed upon by Muskrat and NLH with the exception of the inputs described in the table above which shall be adjusted as necessary from time to time.

POWER PURCHASE AGREEMENT

APPENDIX A

TO

SCHEDULE 1 - BASE BLOCK CAPITAL COSTS RECOVERY

BASE BLOCK CAPITAL COSTS RECOVERY BY OPERATING YEAR

Appendix A to Schedule 1

Base Block Capital Costs Recovery by Operating Year

Version Date: December 11, 2013

Operating Year	Number of months in Operating Year	Base Block Capital Costs Recovery (\$ millions)
1	7	\$ 82.4 million
2	12	\$ 148.5 million
3	12	\$ 147.3 million
4	12	\$ 156.1 million
5	12	\$ 167.8 million
6	12	\$ 179.8 million
7	12	\$ 189.6 million
8	12	\$ 199.8 million
9	12	\$ 210.2 million
10	12	\$ 221.0 million
11	12	\$ 239.5 million
12	12	\$ 258.7 million
13	12	\$ 270.9 million
14	12	\$ 283.4 million
15	12	\$ 296.4 million
16	12	\$ 309.7 million
17	12	\$ 323.5 million

Operating Year	Number of months in Operating Year	Base Block Capital Costs Recovery (\$ millions)
18	12	\$ 337.7 million
19	12	\$ 352.3 million
20	12	\$ 367.4 million
21	12	\$ 382.9 million
22	12	\$ 398.9 million
23	12	\$ 415.4 million
24	12	\$ 434.9 million
25	12	\$ 451.2 million
26	12	\$ 467.0 million
27	12	\$ 483.2 million
28	12	\$ 499.9 million
29	12	\$ 515.4 million
30	12	\$ 525.7 million
31	12	\$ 536.2 million
32	12	\$ 546.9 million
33	12	\$ 557.9 million
34	12	\$ 569.0 million
35	12	\$ 580.4 million
36	12	\$ 625.9 million
37	12	\$ 644.3 million
38	12	\$ 663.3 million

Operating Year	Number of months in Operating Year	Base Block Capital Costs Recovery (\$ millions)
39	12	\$ 682.7 million
40	12	\$ 702.7 million
41	12	\$ 723.1 million
42	12	\$ 744.1 million
43	12	\$ 765.7 million
44	12	\$ 787.8 million
45	12	\$ 810.5 million
46	12	\$ 833.8 million
47	12	\$ 857.8 million
48	12	\$ 882.3 million
49	12	\$ 907.4 million
50	12	\$ 933.3 million
51	5	\$ 398.8 million

POWER PURCHASE AGREEMENT

SCHEDULE 2

INITIAL LOAD FORECAST AND BASE BLOCK ENERGY

**SCHEDULE 2
INITIAL LOAD FORECAST AND BASE BLOCK ENERGY**

Operating Year	Assumed year for purpose of calculation	NL Native Load Forecast for Supply Period as of the Effective Date (GWh)	Base Block Energy (GWh)
1*	2018	4637	1133
2	2019	8880	2002
3	2020	8931	1948
4	2021	9023	2024
5**	2022	9147	2132
6	2023	9222	2241
7	2024	9314	2317
8	2025	9407	2392
9	2026	9474	2468
10	2027	9565	2544
11***	2028	9640	2703
12	2029	9694	2863
13	2030	9773	2938
14	2031	9858	3014
15	2032	9920	3090
16	2033	9989	3166
17	2034	10058	3242
18	2035	10128	3317
19	2036	10197	3393
20	2037	10267	3469
21	2038	10330	3545
22	2039	10394	3621
23	2040	10458	3696
24****	2041	10522	3793
25	2042	10585	3859
26	2043	10642	3916
27	2044	10699	3972
28	2045	10755	4029
29	2046	10812	4072
30	2047	10869	4072
31	2048	10909	4072
32	2049	10949	4072
33	2050	10989	4072
34	2051	11029	4072
35	2052	11069	4072
36****	2053	11109	4305
37	2054	11149	4345

Operating Year	Assumed year for purpose of calculation	NL Native Load Forecast for Supply Period as of the Effective Date (GWh)	Base Block Energy (GWh)
38	2055	11189	4385
39	2056	11229	4425
40	2057	11269	4465
41	2058	11309	4505
42	2059	11349	4545
43	2060	11389	4585
44	2061	11429	4625
45	2062	11469	4665
46	2063	11509	4705
47	2064	11549	4745
48	2065	11589	4785
49	2066	11629	4825
50	2067	11669	4865
51*	2068	4879	2038

*First operating year assumed to be 1 Jun 2018 to 31 Dec 2018, last operating year is 1 Jan to 31 May 2068

**CBPP Co-gen assumed to be retired mid 2022 (51.6 GWh)

***Fermeuse and St. Lawrence wind farms assumed to be retired mid 2028 (167 GWh)

****Emera Agreement assumed to end 1 Jul 2053

*****Emera Block limits the energy available to Hydro in 2048 to 2052. The deficit has been added to the Base Block in 2041 to 2047.

POWER PURCHASE AGREEMENT

SCHEDULE 3

MF PROJECT DESCRIPTION

**SCHEDULE 3
MF PROJECT DESCRIPTION**

Section 1 Access - General

- Site roads to be gravel surfaced unless conditions dictate otherwise e.g. to limit dust and flying stones in areas such as accommodations complex and other site facilities.
- Permanent site access from south, along south side of river via TLH.
- Temporary site access to north side from TLH.

Section 2 Permanent Accommodations

- No permanent accommodations required.

Section 3 Construction Power

- Construction power will be supplied from the existing 138 kV transmission line between CF and HVGB by means of a temporary tap station at MF, to be located on the north side of the Churchill River. It will be comprised of a 50 MVA, 138 - 25 kV transformer with an on-load tap changer (OLTC), 138 kV circuit breakers and associated disconnects for the transformer and the line feeder to HVGB and capacitor banks to provide voltage regulation. The installation will be capable of providing 12 MW peak load and will be remotely controlled and supervised from the NLH Energy Control Centre in St. John's. It will also have backup diesel generation (3.6 MW).
- Construction power will be supplied to the south side of the Churchill River with a 25 kV distribution feeder that will take off from this tap station and cross the river to provide power to the construction sites and the campsite located approximately 10.5 km east of Muskrat Falls.
- A new 125 MVA, 230 - 138 kV transformer with OLTC will be installed in CF as a replacement for one of the two existing 42 MVA transformers without OLTC to accommodate the increase of power transfer to provide 12 MW of power at MF.
- Once the 315 kV HVac network is energized during construction, power may be supplied from the 315 - 138 kV substation transformer tertiary winding until all construction facilities are demobilized.

Section 4 Construction Telecommunications - Muskrat Falls

- Communications during early works of access road, camp start-up and start of site excavations will be by land mobile radio system and cellular phones.
- Communications during the main construction phase will be linked to a new high-speed fibre-optic network being constructed in Labrador and will include:
 - Data (business and personal)
 - Telephone (business and personal)
 - Video Conferencing
 - Television

- Land Mobile Radio System (LMRS)
- Cellular Telephone System (CTS)
- Mobile Internet System (MIS)
- Building Management Systems (BMS)
- Network Management Systems (NMS)
- Closed Circuit Television (CCTV)
- Security and Access Control System (SACS)
- Supervisory Control and Data Acquisition (SCADA) and Protection

Section 5 Accommodations Complex

- Staged, modular construction to accommodate up to 1,500 persons with appropriate offices, cooking, dining, sleeping, washing, medical, firefighting, entertainment, recreational, power, water, sewage, and administrative and other life support facilities within the project area.
- Main site facilities to be located on south side of river approximately 10.5 km southeast of Muskrat Falls.
- Includes substation and distribution system for construction power supplied from the 25 kV feeder and backup diesel generation at the site.
- Designed for removal following construction.

Section 6 Offsite Logistics, Infrastructure and Support - General

- Approximately 15 ha of marshalling yards, potentially in multiple locations. Yards to include grading, fencing, storage racks and equipment for loading/offloading.
- Upgrading and/or replacement of the Paradise River and Kenamu River bridges, or some acceptable alternate solution, on the Cartwright access road to accommodate a design load of 250 t.

Section 7 Reservoir

- Full Supply Level (“FSL”) = 39 m; Low Supply Level (“LSL”) = 38.5 m; Maximum Flood Level (“MFL”) = 45.1 m without Gull Island and 44.3 m with Gull Island.
- Remove all trees that grow in, or extend into the area between 3 m above FSL and 3 m below LSL, except where determined otherwise by the reservoir preparation strategy.
- Trash management system to include an automated hydraulically operated trash removal system explained in detail under “Intake and Penstocks - General”. Trash management also includes a series of trash booms, one located approximately 2.3 km upstream of the intake and a second located approximately 5 km downstream of the plant. Both trash booms will be designed to restrict the movement of floating trash and debris, and guide it to shoreline design and access roads to enable removal and disposal. Both trash booms are to be designed with either mid-channel or shoreline gaps to allow boat travel.
- A series of safety booms, one located approximately 1.4 km upstream of the intake and a second one located downstream of the plant. The design is to include suitable anchorage

and shoreline design. The downstream boom is to have a mid-channel gap with several safety buoys.

Section 8 Diversion

- Through spillway structure.
- Capacity = 5,990 m³ /s based on a 1:20 year return period.
- *Fish Compensation Flow* will be approximately 550 m³ /s equivalent to 30% of mean annual flow.
- *Fish Compensation Flow* will be through spillway structure.

Section 9 Dams & Cofferdams - General

- Development flood capacity is based on the PMF, equal to 25,060 m³ /s at 45.1 m without GI and 44.3 m with GI.
- South Dam to be an earth/rockfill dam with a central core crest elevation to be El. 45.5 m.
- North Dam to be a RCC overflow dam, acting as a secondary spillway with a crest elevation of El. 39.3 m over a 430 m long overflow section. The north end of the dam will be rotated slightly downstream in order to improve the north abutment against the rock knoll and eliminate potential erosion during spilling.
- Transition dams to be conventional concrete.
- All concrete dams to be designed with necessary drainage galleries and monitoring equipment.
- All dams are to be founded directly on bedrock.
- *Cofferdams* are to be of the most economical and proven material and technology.

Section 10 Spillway - General

- Primary spillway structure.
- Concrete structure in rock excavation.
- Capacity = PMF in conjunction with North RCC Dam.
- Five surface vertical lift gates on parabolic rollways, 10.5 m wide with top of gate at El. 40.0 m and sill at El. 18.0 m.
- Gates with heating and hoisting mechanisms designed for severe cold climate operation.
- Structure designed to accommodate an automated, hydraulically operated trash removal system explained in detail under "3200 Intake and Penstocks - General". The system includes a permanent hoist capable of lifting the upstream *stoplogs*.
- One set of upstream steel *stoplogs* with a permanent hoist system.
- One set of downstream steel *stoplogs* operated by a mobile crane.
- *Stoplog* storage on site.
- One emergency diesel *generator* set, complete with fuel storage system, for emergency load requirements sufficient for heating and operation of two surface gates only.

Section 11 North Spur - General

- The deep well system installed in 1981 is to be placed in standby mode.
- Measures are required to prevent water infiltration and to physically stabilize the upstream and downstream slopes. Pressure relief wells are to be installed in the downstream section of the North Spur to lower the groundwater pressure.
- Measures are required to prevent groundwater infiltration into the North Spur from the Kettle Lakes region.
- Piezometers are to be outfitted with data loggers to monitor the water table levels in the North Spur.

Section 12 Powerhouse Channels

- Approach channels excavated in bedrock with minimum rock reinforcement required.
- Draft tubes discharge directly into river in rock excavation.
- *Tailrace* channel excavated in bedrock with minimum rock reinforcement required.

Section 13 Intake & Penstocks - General

- Approach channel in open cut earth/rock excavation and designed to eliminate frazil ice.
- Concrete structure in rock excavation.
- Four intakes (one per unit).
- Four sets of vertical lift operating gates with individual wire rope hoists in heated enclosures.
- One set of steel bulkhead stoplogs able to close only one single intake passage opening (1 of 12) at any one time.
- Four sets of removable steel *trash racks*.
- An automated, hydraulically operated trash removal system capable of cleaning both the upstream side of the intake and the gated spillway. System is to include interchangeable heads that will enable cleaning of floating debris, submerged debris, debris lodged in *trash racks*, and debris in rock traps. The system will include a permanent hoist capable for removing the intake bulkhead *stoplogs*.
- No *penstocks*; four individual water passages in concrete (close-coupled intake/powerhouse).

Section 14 Powerhouse

- Concrete structure in rock excavation.
- Structural steel super-structure with metal cladding.
- Designed, constructed and operated in accordance with applicable requirements of the Provincial Government's Build Better Buildings policy.
- Four-unit powerhouse with two maintenance bays.
 - The south maintenance bay shall be large enough to assemble one complete turbine/*generator* unit, plus assembly and transfer of one extra *rotor*, and include

provision of an unloading area. After completion of turbine/*generator* installation, the south maintenance bay will be reduced in size to accommodate permanent offices and warehousing while leaving space for the dismantling of one entire turbine/*generator* unit.

- The north maintenance bay shall be used to stage civil works construction and shall become a space for mechanical and electrical auxiliary equipment at the completion of the Project.
- Area for offices, maintenance shops and warehouse. Offices, maintenance shops, and warehouse will occupy the south of the maintenance bay.
- All systems are to be designed using *good utility practice*.
- Two sets of steel draft tube *stoplogs* with a permanent hoist system in a heated enclosure.

Section 15 Turbines and Generators

- Four 206 MW units, approximately, @ 0.90 pf vertical axis *Generators*.
- Inertia constant H not less than 4.1 kWs/kVA.
- Four *Kaplan turbines* with *Cavitation Resistant Design*.
- Unitized approach from intake to *generator* step-up transformer.
- Failure of any equipment/system of one unit not to affect the operation of the remaining units.

Section 16 Electrical Ancillary Equipment

- Dual 125V dc battery systems with dual chargers per battery system for control and protection.
- Independent 125V dc battery system with dual chargers for field flashing and other dc power.
- Dual 48V dc battery systems with dual chargers per battery system for telecommunication system.
- A minimum of two independent sources of station service.
- Arc flash category two for all electrical panels of 600V ac or greater.
- Dual digital protection systems.
- One standby emergency diesel *generator* for the powerhouse essential load auxiliaries, complete with fuel storage systems.

Section 17 Mechanical Ancillary Equipment

- Water systems, for supply of turbine and *generator* cooling water, fire protection water, domestic water and auxiliary water.
- Separate high and low pressure compressed air systems.
- Domestic waste water to septic tank and disposal field.
- HVAs systems using the *generators'* cooling systems as a source of powerhouse heating.
- Two overhead powerhouse cranes, with the capability to operate in tandem having a combined design capacity to lift a fully assembled *rotor*.

- Elevator access to all levels of powerhouse.
- Dewatering and drainage systems complete with oil interception system.
- Permanent waste hydraulic and lubricating oil storage and handling system complete with a permanent centrifuge filtration system.
- Oil water separator for drainage from *generator* transformer basins, powerhouse diesel room and tank room.
- Permanent hoist system in each turbine pit.

Section 18 Protection, Control & Monitoring

- Redundant protection systems for each element from two different manufacturers.
- Main and backup systems to be installed in two separate panels.
- Protection shall be stable during system transients and operate correctly during system faults.
- A distributed digital control and monitoring system.
- Dual CPU for control system functions.

Section 19 Generator Transformers

- Four step-up transformers (315/15 kV, 229 MVA), plus one spare step-up transformer (same rating), located on powerhouse draft tube deck.
- Each unit will have a *generator* circuit breaker.
- Each transformer will include drainage to a common oil water separator.
- Transformers will be separated from each other by a concrete firewall.

Section 20 Collector Lines - Powerhouse to Switchyard

- Four 315 kV HVac overhead transmission lines to connect the high side of the step up transformers to the switchyard.

Section 21 Fish Habitat Compensation

- *Fish habitat compensation* will include delta enhancements at the Pinus River and Edward's Brook and enhancements of spawning areas located in Gull Lake.

Section 22 Terrestrial Habitat Compensation

- *Terrestrial habitat compensation* will be based on conditions of EA release and *terrestrial habitat compensation* plans to be agreed to with applicable regulatory bodies.

Section 23 Operations Telecommunications System - Muskrat Falls

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers.
- OTN Layer shall be the telecommunications backbone and utilize the single OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN Layer

equipment nodes shall be designed based upon the least total cost of ownership alternative.

- Convergence layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the access layer subsystems for transmission on the OTN.
- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance.
- The Muskrat Falls telecommunication assets specifically include the following:
 - Convergence and access layers telecommunication systems at the MF generating plant, *converter station* and switchyards.
 - NLH ECC and BCC SCADA system upgrades.
 - Network Management System to monitor, notify, and provision the OTN, convergence and access layers telecommunication systems.

POWER PURCHASE AGREEMENT

SCHEDULE 4

FORM OF ASSIGNMENT

**SCHEDULE 4
FORM OF ASSIGNMENT**

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ASSIGNMENT OF [NAME OF] AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the ___ day of _____, 20___.

AMONG:

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007 (Newfoundland and Labrador)* and a wholly-owned subsidiary of Nalcor ("**NLH**")

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor ("**MF**")

- and -

<@> [type of entity and jurisdiction or statute of incorporation or formation] [*insert basis on which assignee is permitted*] (the "**Assignee**")

WHEREAS:

A. NLH and Muskrat entered into the Power Purchase Agreement on [_____], 201_ (the "**PPA**");

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;

“Assignee” means [], a Qualified Assignee of the Assignor;

“Assigned Rights” means the PPA and the **Muskrat Rights**;

“Assignor” means [**Muskrat or an Affiliate of Muskrat, or NLH or an Affiliate of NLH, 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;

“Consenting Parties” means [**NLH, Muskrat and Labrador Transco**];

“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” means []; [**NTD: Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmissions assets and contracts transferred to him, the Effective Date to be the date when all of those transfers are effective.**]

“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;

“Muskrat” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Muskrat Rights” has the meaning set forth in the PPA;

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its 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**;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“PPA” has the meaning set forth in the recitals;

“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;

“Qualified Assignee” has the meaning set forth in the PPA;

“**Regular Business Hours**” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“**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; 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 a Qualified Assignee

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 Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights as of the Effective Date and covenants and agrees with the Assignor and the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Rights. 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 Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of PPA

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the PPA. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor is in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights, subject to the terms and conditions herein and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Section 19.1(d) of the PPA does not require consent to assignment.

2.5 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 2.5(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 2.7**.

2.6 **Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 2.6(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.

2.7 **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.

2.8 **Payment and Offset**

- (a) Subject to **Section 2.8(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.

2.9 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 ●.

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 Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary 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][Qualified Assignee]** of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

**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 5 to the PPA (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 PPA]**

**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:

- (a) To Assignor:

[•]
- (b) To Assignee:

[•]
- (c) To Consenting Parties

[•]

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 PPA.

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.

[The 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].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

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

POWER PURCHASE AGREEMENT

SCHEDULE 5

DISPUTE RESOLUTION PROCEDURE

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**SCHEDULE 5
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:

“Agreement” means the agreement to which this Schedule is attached;

“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)(i)**;

“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)(i)**;

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

“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 by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

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

“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 Agreement.

2.3 Interim Measures

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

2.4 Mediator or Arbitrator as Witness

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

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by the Party requesting a review under this **Section 3** by Notice to the other Party (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 no 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 any 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 forth 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) a 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 no 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) a 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 Parties**”) 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 **Sections 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 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 any other agreement to which they are both parties, 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 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

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

Section 6 **Expert Determination Procedure**

6.1 **Referral for Expert Determination**

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 the Agreement, 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 **Sections 6.3(a)** or **(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 forth 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 Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

POWER PURCHASE AGREEMENT

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.

POWER PURCHASE AGREEMENT

SCHEDULE 6

GENERAL SECURITY AGREEMENT

**SCHEDULE 6
GENERAL SECURITY AGREEMENT**

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GENERAL SECURITY AGREEMENT

THIS GENERAL SECURITY AGREEMENT is made effective the ● day of ●, 2013 (the “Effective Date”).

BETWEEN:

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor (“**Muskrat**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the Statutes of Newfoundland and Labrador, 2007, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

WHEREAS:

- B. Muskrat and NLH are parties to the PPA; and
- C. Pursuant to the PPA, Muskrat has agreed to grant to NLH a general security interest in the MF Plant within the meaning of the *Personal Property Security Act* (Newfoundland and Labrador), which shall include a general security interest in the PPA;
- D. the security interest granted by Muskrat shall in all respects be subject and subordinate to the security interests granted by the Financing Documents.

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals, capitalized terms which are defined in the PPA and are not otherwise defined herein have the meanings ascribed thereto in the PPA when used in this Agreement, and the following terms shall have the meanings set forth below:

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

“**Collateral**” means all of Muskrat’s present and after acquired personal property, including the rights and interests of Muskrat in the PPA and the MF Plant, including all equipment, inventory, accounts, intangibles, documents of title, chattel paper, instruments, money,

securities, documents, undertaking and proceeds of any of the foregoing; but excluding the Gull Island Rights;

“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 6.1**;

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

“GIA” means the agreement between Labrador Transco, Muskrat and NLH, in its capacity as the NLSO, by which the LTA is constructed and operated by Labrador Transco as a system upgrade, so as to permit the interconnection of the MF Plant and the NL Transmission System in exchange for payment by Muskrat of the LTA Payments, which are recovered by ;

“Gull Island Rights” means the water rights associated with the section of the Lower Churchill River above the Muskrat Falls development attributable to the Gull Island development, which is defined as:

- (a) that part of the Churchill River below the intersection of the Churchill River with the meridian of 63° 40' west of Greenwich, downstream to the intersection of the Churchill River with the meridian of 61° 25' west of Greenwich, and all waters that naturally flow into, or by diversion flow into, the Churchill River between these two points, and
- (b) that part of the Churchill River upstream of the point of intersection of the Churchill River with the meridian of 63° 40' west of Greenwich that lies below the 425 foot contour line or below elevation 425 feet, as referenced in Appendix A of the Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961,

but excludes the area described in Appendix A to the Churchill Falls (Labrador) Corporation (Lease) Act, 1961 and all waters while they are in that area. The rights included in the reassignment option that Nalcor may exercise at any time thereby requiring Muskrat to reassign all Gull Island Rights shall include the grant to:

- (c) the exclusive right to harness and make use of the Lower Churchill River above the Muskrat Falls development,
- (d) all water rights above elevation 39.0 metres referenced from the Canadian Geodetic Vertical Datum 1928 (CVGVD28) in, to, and in respect of the Lower Churchill River, and
- (e) the exclusive right to construct and utilize all dams, tunnels, canals, diversions, power houses and any and all works on the Lower Churchill River above the Muskrat Falls development necessary for the development of hydro electric power, and

- (f) the exclusive right to store and regulate so much of the Lower Churchill River as may be economic and/or beneficial for the purposes of the development of the Lower Churchill River above Muskrat Falls,

but shall not include any right to divert the Lower Churchill River outside the Churchill River basin;

“**PPA**” means the agreement between Muskrat and NLH, by which the MF Plant is constructed and operated by Muskrat, and NLH purchases Energy, Capacity, Ancillary Services and GHG Credits in exchange for payment by NLH to Muskrat of the Base Block Payments, and to which this Agreement is attached as a Schedule;

“**PPSA**” means the *Personal Property Security Act* (Newfoundland and Labrador);

“**PPSA**” means the *Personal Property Security Act* (Newfoundland and Labrador);

“**Muskrat Rights**” has the meaning set forth in **Section 5.2(a)**;

“**Parties**” means Muskrat and NLH, and “**Party**” means one of them;

“**Secured Obligations**” means the obligations of Muskrat as set forth in the PPA;

“**Term**” has the meaning set forth in **Section 3.1**.

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) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Appendices) are in lawful money of Canada.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 6**, 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
SECURITY AGREEMENT AND COVENANTS OF MUSKRAT

2.1 **Security Agreement**

- (a) Grant of Security Rights - As general and continuing collateral security for Losses which may be incurred as a result of a Muskrat Default in the obligation to perform the Secured Obligations, Muskrat hereby transfers, assigns, mortgages and charges the Collateral to and in favour of NLH, and grants to each such Party, a continuing security interest in the Collateral.

- (b) Attachment; No Obligation to Advance - Muskrat confirms that value has been given by NLH, that NLH has rights in the Collateral (other than after-acquired property) existing at the date of this Agreement, as the case may be, and that Muskrat and NLH have not agreed to postpone the time for attachment of the security interest created by this Agreement to any of the Collateral. The security interest in respect of the Collateral created by this Agreement will have effect and be deemed to be effective whether or not the Secured Obligations or any part thereof are owing or in existence before or after or upon the date of this Agreement.

- (c) Subordination - The Parties acknowledge and agree that the transfer, assignment, mortgage and charge of the Collateral, and the continuing general security interest granted in the Collateral, is subject to and subordinate in all respects to the transfers, assignments, mortgages, charges and security interests created pursuant to the Financing Documents, and NLH agrees to execute and deliver an Acknowledgement of Subordination in the form attached as **Appendix A**.

2.2 **Covenants of Labrador Transco**

Muskrat covenants and agrees with NLH as follows:

- (a) Further Documentation - Muskrat will from time to time, at its expense, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as NLH may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any notices, financing statements or financing change statements under any applicable legislation with respect to the transfer, assignment, mortgage, charge and security interest created by this Agreement). Muskrat acknowledges that this Agreement has been prepared based on the existing laws in NL and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation to preserve and comply with the intent of this Agreement. Accordingly, Muskrat agrees that NLH will

have the right to require that this Agreement be amended, supplemented or replaced, and that Muskrat will immediately on request by NLH authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions as a result of any changes in such laws, or (iii) if Muskrat merges, amalgamates or consolidates with any other Person or enters into any corporate reorganization, in each case in order to confer on NLH transfers, assignments, mortgages, charges and security interests similar to, and having the same effect as, the transfer, assignment, mortgage, charge and security interest granted by Muskrat under this Agreement.

- (b) Payment of Expenses; Indemnification - Upon the occurrence of a Muskrat Default, Muskrat will pay on demand, and will indemnify and save NLH harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and his or her own client basis and any Taxes payable to any Authorized Authority with respect to any such liabilities, costs and expenses) (i) incurred by NLH in the administration or enforcement of this Agreement, or (ii) incurred by NLH in performing or observing any of the other covenants of Muskrat under this Agreement.

ARTICLE 3 TERM AND TERMINATION

3.1 Term

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and terminate in accordance with **Section 3.2**.

3.2 Termination

This Agreement shall terminate upon termination of the PPA.

3.3 Effect of Termination

- (a) Obligations on Termination - When this Agreement terminates:
- (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Section 6.1**); and

- (ii) no Party shall have any obligation to the other Parties in relation to this Agreement or the termination thereof, except as set out in this **Section 3.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
 - (i) the final settlement of all accounts between them;
 - (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 8.3**.

**ARTICLE 4
DEFAULT AND REMEDIES**

4.1 Muskrat Event of Default

A default by Muskrat under this Agreement shall occur whenever there is a Muskrat Default under the PPA.

4.2 Remedies upon Muskrat Default

Upon the occurrence of a Muskrat Default and at any time thereafter, NLH shall be entitled to exercise all or any of their rights, remedies or recourse available to it under (a) the PPA, and (b) as a secured party under and as defined by the PPSA.

4.3 NLH's Appointment as Attorney-in-Fact

Muskrat constitutes and appoints NLH and any officer or agent of the NLH, with full power of substitution, as Muskrat's true and lawful attorney-in-fact with full power and authority in the place of Muskrat and in the name of Muskrat or in its own name, from time to time in NLH's discretion after a Muskrat Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the transfer, assignment, mortgage, charge and security interest created by this Agreement is released. Nothing in this **Section 4.3** affects the right of NLH as secured party, or any other Person on NLH's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as NLH or such other Person considers appropriate.

ARTICLE 5
ASSIGNMENT AND CHANGE OF CONTROL

5.1 **NLH Assignment Rights**

- (a) General - NLH shall not assign this Agreement, its interests or rights hereunder, any Claim or any agreement relating to the foregoing.
- (b) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.1** will be null and void.

5.2 **Muskrat Assignment Rights**

- (a) Muskrat shall be entitled to assign all of its rights and interests in this Agreement or any Claim (collectively, the “**Muskrat Rights**”) to any Person which has become the assignee of Muskrat’s rights and interests in the PPA pursuant to the assignment provisions of the PPA.
- (b) Agreement to be Bound - No assignment may be made of the Muskrat Rights by Muskrat unless such assignment includes all the Muskrat Rights and Muskrat obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Muskrat Rights.
- (c) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.2** will be null and void.

ARTICLE 6
DISPUTE RESOLUTION

6.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 5 to the PPA (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 6**, without prejudice to any Party’s rights pursuant to this Agreement.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 **Muskrat Representations and Warranties**

Muskrat represents and warrants to NLH, 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 and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its knowledge, threatened against it;
- (e) there are no legal proceedings pending or, to its knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;
- (g) it 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;
- (h) Except for such as are associated with the Financing Documents, Muskrat holds the Collateral free and clear of any mortgage, charge, hypothecation, lien or other adverse claim or encumbrance of any nature.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 **Notices**

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

(a) to Muskrat:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL A1B 0M4
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

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

8.2 **Prior Agreements**

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein.

8.3 **Counterparts**

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

8.4 **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.

8.5 **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. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

8.6 **Relationship of the Parties**

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship among or between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement among or between the Parties 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 any other Party for any purpose nor to permit a Party to enter into agreements or incur any obligations for or on behalf of the other Party.

8.7 **Further Assurances**

Each Party 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.

8.8 **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, each Party 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.

8.9 **Time of the Essence**

Time shall be of the essence.

8.10 **Amendments**

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

8.11 **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 such Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

8.12 **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.

8.13 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties, arising out of this Agreement. All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, representations, warranties and releases, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

8.14 **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 (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) 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.

8.15 **Successors and Assigns**

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

[Remainder of this page intentionally left blank.]

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

MUSKRAT FALLS CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

POWER PURCHASE AGREEMENT

APPENDIX A

TO THE

GENERAL SECURITY AGREEMENT

ACKNOWLEDGEMENT OF SUBORDINATION

ACKNOWLEDGEMENT OF SUBORDINATION

The undersigned hereby acknowledges, declares and agrees that the securities interest granted to it in the General Security Agreement dated _____ (the “**Security Interest**”) between Muskrat Falls Corporation and Newfoundland and Labrador Hydro, and all of the rights, remedies and/or recourses of the undersigned in connection therewith are hereby and shall hereafter be completely subordinated to and rank after any and all Liens now or hereafter held by the Collateral Agent, the Security Trustee or any other GAA Finance Party (as each of those terms is defined in the Financing Documents, collectively, the “**Senior Liens**”), for its own benefit and the benefit of the GAA Finance Parties, notwithstanding any ranking that might otherwise be established by Applicable Law resulting from the nature of the Liens created under the Security Interest or the Senior Liens or the date or time of execution, issue, delivery, registration, filing, notification, publication or perfection of any deed, document, application for registration, notice or financing statement, or otherwise howsoever. The undersigned covenants and agrees not to exercise any of its rights, remedies and/or recourses under the Security Interest without the prior written consent of the Collateral Agent. The undersigned agrees to take such actions and execute and deliver such documents and information as may be reasonably requested by the Collateral Agent from time to time in order to give effect to the subordination contemplated herein, including, without limitation, registration of an amendment to any Personal Property Security Act (Newfoundland and Labrador) registration made in connection with the Security Interest to note the subordination in favour of the Senior Lenders.

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

POWER PURCHASE AGREEMENT

SCHEDULE 7

CONFIDENTIAL INFORMATION

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SCHEDULE 7
CONFIDENTIAL INFORMATION SCHEDULE

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

“Agreement” means the agreement to which this Schedule is attached;

“ATIPPA” means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

“Authorized Purpose” means a purpose associated with the rights and obligations set forth in the Agreement;

“ECA” means the *Energy Corporation Act* (Newfoundland and Labrador);

“Lender Recipient” has the meaning set forth in **Section 2.3**;

“Representatives” means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

“Schedule” means this **Schedule 7 - Confidential Information**;

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

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

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

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

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the Term, provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

- (a) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this Schedule or other obligation of confidentiality;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;

- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

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

Section 3 Acknowledgements

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

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

Section 4 Disclosures Required by Law

4.1 The Parties and each of their Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. Each of the Parties acknowledge that such Party and each of its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 The Parties hereby acknowledge and agree that the Confidential Information disclosed by the other Party is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to other Party, as applicable. It is further acknowledged and agreed that each Party has represented to the other Party that the Confidential Information disclosed is treated consistently in a confidential manner by them and is customarily not provided to their competitors. Therefore, the Parties shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure and be entitled to be represented and make arguments in support of non-disclosure.

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

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;
- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including **Section 4.3**, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Party or its Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding between the Party or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

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

POWER PURCHASE AGREEMENT

SCHEDULE 8

STEP-IN AGREEMENT

**SCHEDULE 8
STEP-IN AGREEMENT**

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STEP-IN AGREEMENT

THIS STEP-IN AGREEMENT is made effective the 29th day of November, 2013 (the “**Effective Date**”).

AMONG:

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**MF**”)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as collateral trustee under the deed of trust and mortgage dated November 29, 2013, executed in its favour by MF (the said deed of trust and mortgage, as changed and in effect from time to time, the “**Collateral Trust Deed**”), for and on behalf of the Senior Secured Bondholders (as defined therein) (the “**Security Trustee**”)

- and -

TORONTO DOMINION BANK, in its capacity as collateral agent under the collateral agency agreement dated November 29, 2013, executed in its favour by, *inter alia*, MF (as changed and in effect from time to time, the “**Collateral Agency Agreement**”), for and on behalf of the GAA Finance Parties (as defined therein) (the “**Collateral Agent**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) and a wholly-owned subsidiary of Nalcor (“**NLH**”)

WHEREAS:

- A. MF has entered into the Power Purchase Agreement made as of November 29, 2013 with NLH (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of MF therein (as the context requires and/or so admits) collectively, the “**PPA**”) with NLH;
- B. Pursuant to the Collateral Trust Deed and various other security documents, the Security Trustee has been or will be granted Liens in all of the assets and rights of MF, including the PPA (collectively, the “**Security Interests**”).

NOW THEREFORE in consideration of the premises and the agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. Definitions

The words and expressions (capitalized or not), wherever used in this Agreement, or in any agreement supplemental or ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings ascribed thereto.

(a) General Definitions - Unless the context otherwise requires, in this Agreement:

“Account Holder” has the meaning set forth in the Collateral Trust Deed;

“Acquiror” has the meaning set forth in **Section 5(a)(v)**;

“Agent Party” has the meaning set forth in **Section 5(a)(iv)**;

“Base Block Payments” has the meaning set forth in the PPA;

“Business Day” means any day excluding Saturday, Sunday or any other day which in the City of St. John’s, Newfoundland and Labrador, is a legal holiday or a day on which banks are authorized by Law or by local proclamation to close;

“Canada” means Her Majesty the Queen in Right of Canada;

“Collateral Agency Agreement” has the meaning set forth at the commencement hereof;

“Collateral Agent” has the meaning set forth at the commencement hereof;

“Collateral Trust Deed” has the meaning set forth at the commencement hereof;

“Consent” has the meaning set forth in **Section 5(b)**;

“Default Notice” has the meaning set forth in **Section 5(a)(iv)**;

“Financing Documents” has the meaning set forth in the PPA;

“GAA Finance Parties” has the meaning set forth in the Financing Documents;

“Law” means all applicable provisions of laws, ordinances, codes, rules, regulations, orders, orders in council, directives, decrees, administrative orders, guidelines, policies of any governmental entity, as well as the applicable provisions of any treaty and any order and decree of any tribunal and arbitrator after the expiration of any appeal period;

“Lien” means (i) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation, (ii) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), including by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement,

conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms, (iii) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and (iv) any agreement to grant any of the foregoing rights or interests;

“**MF**” has the meaning set forth at the commencement hereof;

“**MF Plant**” has the meaning set forth in the PPA hereof;

“**Muskrat Project Funding Account**” means the account of MF maintained with the Account Holder and bearing number 58003-5230696;

“**NLH**” has the meaning set forth at the commencement hereof;

“**Operational Control**” means performance of, or the authority to perform, direct or authorize performance of, security monitoring, adjustment of generation and transmission resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for Reliability, planning assessments, coordination with Control Area operators, voltage reductions, load shedding and control of physical access to the generation and transmission resources;

“**PPA**” has the meaning set forth in **Recital A**;

“**Paid in Full**” means, in relation to any indebtedness that is or may become owing to any person, the permanent, indefeasible and irrevocable payment in cash to such person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to insolvency events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such person to lend or otherwise extend credit or pay any indebtedness; and “**Pay in Full**” shall have a correlative meaning;

“**Qualified Assignee**” has the meaning set forth in the PPA;

“**Remedies Consultation Period**” has the meaning set forth in the Financing Documents;

“**Secured Obligations**” has the meaning set forth in the Collateral Trust Deed;

“**Security Interests**” has the meaning set forth in **Recital B**;

“**Security Trustee**” has the meaning set forth at the commencement hereof;

“**Senior Secured Bondholders**” has the meaning set forth in the Collateral Trust Deed; and

“Subordinated GSA” means the General Security Agreement entered into between Muskrat and NLH pursuant to Section 14.6(d) of the PPA and substantially in the form attached as Schedule 6 to the PPA, which has been subordinated to the Security Interests by a Subordination Acknowledge in the form of Appendix A thereto.

(b) Extended Meanings - To the extent the context so admits, in this Agreement the following words and expressions shall be given the extended meanings set forth opposite them:

an **“agreement”** - any agreement, oral or written, simple contract or specialty, bond, bill of exchange, indenture, instrument or undertaking;

“asset” - any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset;

a **“breach”** - any breach, default, event of default, or any equivalent or similar event however described under any agreement;

“cancel” - cancel, surrender, repudiate, disclaim, terminate or suspend;

“change” - change, modify, alter, amend, supplement, restate, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive;

“claim” - claim, claim over, cross-claim, counter-claim, defence, demand, liability, proceeding, judgment or order or award of any court, other governmental authority, arbitrator or other alternative dispute resolution authority;

a **“document”** - a written agreement, consent, waiver, certificate, notice or other written document or instrument;

a **“government”** - (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it;

“governmental authority” - any court, administrative tribunal, regulatory authority, government, union of nations or any agency or other authority of a government or union of nations;

“include” - include without limitation, and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters;

“losses and expenses” - losses, costs, expenses, damages, penalties and judgments and awards of any court or other governmental authority, arbitrator, mediator or other alternative dispute resolution authority, including any applicable awarded costs, and legal fees and disbursements on a solicitor and client basis;

“obligations” - indebtedness, obligations, promises, covenants, responsibilities, acts, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“person”** - an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a corporation organized under the laws of any jurisdiction, a government or agency of a government or any other legal or commercial entity;

“proceeding” - any legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding;

“receiver” - a privately appointed or court appointed receiver or receiver and manager, and, except in the definition of “Agent Party”, an interim receiver, liquidator, trustee in bankruptcy, administrator, administrative receiver and any other like or similar official;

a **“registration”** - any notice to or filing, publication, recording or registration with any governmental authority having jurisdiction with respect to any specified person, transaction or event, or any of such person's assets;

“rights” - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities, recourses and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“successor”** of a person (the “relevant party”) - (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates and (ii) any person to whom all or substantially all of the assets of the relevant party are transferred;

“written” and **“in writing”** - an original writing, a pdf or facsimile copy of a writing or an email.

2. Representations, Warranties and Obligations of NLH

NLH hereby represents, warrants, acknowledges and confirms to the Security Trustee, with the knowledge that the Security Trustee and the Senior Secured Bondholders are relying on such representations, warranties, acknowledgments and confirmations for the purpose of entering into the Collateral Trust Deed and the Financing Documents, that:

- (a) NLH is a corporation duly and validly incorporated and existing under the laws of Newfoundland and Labrador and each has the legal capacity and right to own its assets and to carry on its business in each jurisdiction in which its assets are located or it carries on business;

- (b) NLH has the legal capacity and right to enter into this Agreement and PPA and do all acts and things and execute and deliver all documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms and conditions hereof and thereof;
- (c) NLH has taken all necessary action to authorize the execution and delivery of this Agreement and the PPA, the creation and performance of its obligations hereunder and thereunder as well as the consummation of the transactions contemplated hereunder and thereunder;
- (d) NLH has duly executed and delivered this Agreement and the PPA;
- (e) none of the authorization, execution, delivery or performance of this Agreement or the PPA by NLH nor the consummation of any of the transactions contemplated hereby or thereby:
 - (i) requires any authorization to be obtained or registration to be made (except such as have already been obtained or made and are now in full force and effect and those not yet required);
 - (ii) conflicts with, contravenes or gives rise to any breach under (A) any of the articles (being the Hydro Corporation Act, 2007 (Newfoundland and Labrador), the Energy Corporations Act (Newfoundland and Labrador) and by-laws, (B) the provisions of any document or obligation to which NLH is a party or by which NLH or any of its assets are or may become bound or (iii) any Law;
 - (iii) has resulted or will result in the creation or imposition of any Lien upon any of the assets of NLH, other than Liens subordinated to the Security Interests;
- (f) each of this Agreement and the PPA constitutes a valid and legally binding obligation of NLH enforceable against it in accordance with its terms, subject only to Laws relating to bankruptcy, insolvency, winding-up, dissolution, administration, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion;
- (g) the PPA is in full force and effect and has not been changed and there is no dispute (to the best of its knowledge) thereunder now existing, and after giving effect to the granting of the Security Interests by MF to the Security Trustee in the PPA, and after giving effect to this Agreement by NLH, there exists no event or condition which would constitute a breach, or which, with the giving of notice or lapse of time or both, would have constituted a breach under the PPA;

- (h) NLH and to the best of the knowledge, information and belief of NLH, and after due inquiry, MF is in full compliance in all material respects with and has performed its obligations under the PPA which are required to be complied with and/or performed to date;
- (i) NLH has no outstanding claims of a material nature against MF in respect of the PPA;
- (j) there are no existing circumstances which could give rise to a material breach by NLH or, to the best of the knowledge, information and belief of NLH, and after due inquiry, MF, under the PPA; and
- (k) NLH has not delivered to or received from MF, any notice purporting to cancel the PPA.

3. Benefits hereunder independent to those of MF

NLH hereby acknowledges and agrees that the rights of each Agent Party under this Agreement shall be independent to those of MF under the PPA and may be enforced by such Agent Party independently from MF.

4. Agent Party not bound to exercise rights

NLH hereby acknowledges and agrees that, save as otherwise expressly agreed to in writing, nothing herein contained shall be construed or interpreted as obliging any Agent Party, nor shall any Agent Party be liable for the failure, to exercise any of the rights afforded to it hereunder or under the Collateral Trust Deed. NLH hereby further acknowledges and agrees that no Agent Party shall be liable for any loss and expense incurred or suffered by NLH as a result of any delay by, or any failure of, such Agent Party to exercise any of, the rights afforded to such Agent Party hereunder or under the Collateral Trust Deed.

5. Consent to Liens and Subordination

- (a) In furtherance of the terms and conditions of the PPA, NLH hereby expressly:
 - (i) acknowledges and irrevocably consents to the Security Interests granted by MF in favour of the Security Trustee in the PPA and any future grant of any Security Interests by MF in favour of the Security Trustee in the PPA, and, in connection with any such creation of Security Interests, the filing or registration of any financing statements, registration forms, or any similar documents;
 - (ii) agrees that, save as is otherwise expressly agreed to in writing, no Agent Party shall incur any obligation of MF or otherwise whatsoever to NLH under the terms of the PPA;
 - (iii) agrees that, save as is otherwise expressly agreed to in writing, any Agent Party shall have the right, but not the obligation, to perform any obligation

required of MF under the PPA at any time. Nothing herein shall require any Agent Party to cure any breach by MF of the PPA or to perform such obligation of MF thereunder;

- (iv) agrees that upon the Security Interests becoming enforceable, the Security Trustee, or any nominee or designee thereof, or any receiver of MF or any receiver of the assets of MF appointed by or on the application of the Security Trustee (the Security Trustee, any such nominee, designate or receiver shall be referred to herein as an “**Agent Party**”) shall, upon written notice (a “**Default Notice**”) to NLH, and in accordance with its respective interest, be entitled to enforce the Security Interests against the PPA (including its intention to take Operational Control of the MF Plant), including the right to enforce and enjoy all of the rights that MF has or may have under the PPA, subject to **Section 6**, to the same extent and in the same manner as if it were an original party thereto in the place of MF. NLH hereby acknowledges that it shall not have the right to require any such Agent Party to pay any amounts that may be accrued or past due by MF under the PPA;
- (v) agrees that whether or not an Agent Party gives a Default Notice, an Agent Party may assign the PPA to a third party that is a Qualified Assignee subject to the provisions of Article 19 of the PPA (an “**Acquiror**”). Such an assignment to the Acquiror is conditional upon such Acquiror agreeing to observe and perform all of MF's obligations under the PPA arising after the date of such assignment. NLH hereby acknowledges that it shall not have the right to require any such Acquiror to pay any amounts that may be accrued or past due by MF under either PPA;
- (vi) upon any Agent Party completing such an assignment to an Acquiror, each Agent Party shall be released from any and all obligations that such Agent Party may have hereunder to perform the obligations of MF to NLH under the PPA. Nothing in this Agreement, and neither the giving of a Default Notice nor any assignment pursuant to **Section 5(v)**, releases MF from its obligations to NLH under and in relation to the PPA;
- (vii) agrees that it shall not have any right to cancel or terminate the PPA, including in the event of any breach by MF of either the PPA that is particular to MF and that is not curable by the Security Trustee or any other Agent Party at such time, such as the insolvency, bankruptcy, general assignment for the benefit of creditors or the appointment of a receiver of MF and that the PPA shall remain in full force and effect until all Secured Obligations are paid in full;
- (viii) agrees to provide to the Security Trustee or any other Agent Party at such time, at the same time that any notice is provided to MF of any breach of the PPA or of any proceedings under the PPA, the same notice that it provides to

MF. All notices to any Agent Party shall be in writing and shall be delivered to such Agent Party at the addresses set forth in **Section 18** or any other address confirmed to NLH from time to time; and

- (ix) subordinates and postpones the payment of all amounts owing to it and security taken with respect to such amounts from time to time by MF pursuant to the PPA to the prior and indefeasible payment in full of all Secured Obligations.

- (b) In the event that NLH takes steps to exercise its rights as subordinated secured creditor pursuant to the Subordinated GSA, after having received the written consent of the Collateral Agent (the “**Consent**”), which may only be provided in accordance with the Requisite Instructions (as such term is defined in the Collateral Agency Agreement), NLH acknowledges, confirms and agrees that, as a condition to the Consent, whether it is explicitly expressed in the Consent or not, and as a condition to the exercise of such rights under the Subordinated GSA, that NLH shall have taken such steps and actions as shall be legally required to ensure the continuation, on an enforceable, valid, binding, and unconditional as to continuance, basis, of the obligations and requirements of each of the parties to the PPA, including explicitly those relating to the construction, operation and maintenance of the MF Plant and the payment of all payment amounts required to be made under the PPA such that payments will continue to be made, on the terms and on the basis, as required by the PPA without interruption, reduction, adjustment, termination or otherwise, and strictly in accordance with the terms of the PPA. NLH acknowledges and confirms that it is the intention of this provision, and that it is a condition to the Consent, that there be no change to the obligations under the PPA in the event of any exercise of the security under the Subordinated GSA, including no delay to the payments required pursuant to the PPA, regardless of the legal effect of the exercise of the security, and that all payments shall continue and shall be paid such that they will be received by the Collateral Agent for and on behalf of the GAA Finance Parties and for application in accordance with the terms of the PPA and the Financing Documents. Each of the parties hereto acknowledges that the Financing Documents, and the guarantees and assurances in relation thereto provided by, inter alia, Canada have been provided based upon the continued requirement for the construction, operation and maintenance of the MF Plant and the continuation of the payments and obligations pursuant to the terms of the PPA throughout the term expressed in the PPA and the Financing Documents. As a covenant and agreement directly in favour of the Collateral Agent for the benefit of the GAA Finance Parties, and specifically for and on behalf of Canada, NLH as the secured party under the Subordinated GSA will take such steps and actions, provide such further assurances, and enter into such agreements with the Collateral Agent, or such other party as may be designated or named by the Collateral Agent, in order to preserve and continue the contractual obligations of the PPA, as applicable, and to achieve the intention of this provision.

6. Specified Default Provisions

The Security Trustee and NLH hereby covenant and agree that prior to enforcement of the Security Interests by the Agent Party:

- (a) the Agent Party shall provide the Default Notice to NLH concurrently with any default notice issued by the Agent Party to MF under the Security Documents, which notice shall include the then outstanding balance of the Secured Obligations;
- (b) the Agent Party shall provide NLH 30 days notice following delivery of the Default Notice of its intention to take Operational Control of the MF Plant pursuant to the Security Interests. During such notice period, provided no NLH default has occurred and is then continuing, NLH may elect pursuant to Section 14.6(b) of the PPA to assume Operational Control of the MF Plant pursuant to the terms and conditions set out in Section 14.6(b) of the PPA, provided that NLH also elects pursuant to Section 14.6(b)(i) of the PPA to assume responsibility for O&M Activities (as defined in the PPA) while NLH has Operational Control. Provided NLH assumes and maintains Operational Control of the MF Plant and responsibility for the O&M Activities (as defined in the PPA) and continues to pay the Base Block Payments as provided in the PPA, during the period of such Operational Control, the Agent Party shall take no further steps to enforce the Security Interests against the MF Plant or the PPA;
- (c) if NLH does not elect to assume Operational Control of the MF Plant pursuant to **Section 6(b)**, the Agent Party may, by notice given to NLH, demand that NLH assume Operational Control of the MF Plant. If NLH fails to assume Operational Control and responsibility for the O&M Activities (as defined in the PPA) following receipt of such notice, the Agent Party may continue to enforce all its rights pursuant to the Security Interests. NLH shall have no liability in damages or otherwise for failure to assume Operational Control;
- (d) within the Remedies Consultation Period related to a Default Notice from the Agent Party, NLH has the right but not the obligation to Pay in Full the Secured Obligations directly to the Agent Party through the Muskrat Project Funding Account and upon receipt of such payment, the Agent Party shall cease enforcement proceedings and release its Security Interests following which MF shall recalculate the future Base Block Capital Costs Recovery pursuant to **Schedule 1** of the PPA to reflect payment of the Secured Obligations and the Base Block Capital Costs Recovery portion of the future Base Block Payments under the PPA shall be adjusted accordingly;
- (e) NLH shall not be subrogated to any right of the Agent Party until all the Secured Obligations are Paid in Full as provided in **Section 6(d)**. Thereafter,
 - (i) NLH shall be subrogated to the rights of MF and the Agent Party under, pursuant to and otherwise in respect of the Financing Documents, and

- (ii) NLH may require MF and the Agent Party to assign to it any of their rights then remaining under the Financing Documents with respect to the Secured Obligations, but any such assignment shall be without representation or warranty by, or recourse against, MF and the Agent Party; and
- (f) an assignment of the PPA shall only occur to an Acquiror and such assignment shall be conditional upon such Acquiror agreeing to observe and perform all of MF's obligations under the PPA arising after the date of such assignment.

7. Arrangements Regarding Payments

All payments to be made by NLH to MF under the PPA shall be made, in lawful money of Canada, directly for deposit into the Muskrat Project Funding Account, and shall be accompanied by a notice from NLH stating that such payments are made under the PPA. MF hereby authorizes and irrevocably directs NLH to make such payments as aforesaid and agrees such payment shall satisfy NLH's obligation to pay such amounts to MF under the PPA.

8. Communications from NLH

Until such time as an Agent Party notifies NLH in writing of its exercise of rights under the Collateral Trust Deed, NLH shall continue to communicate directly with MF with regard to its continuing obligations under the PPA. Upon receipt by NLH of written instructions from an Agent Party pursuant to its exercise of rights under the Collateral Trust Deed, NLH agrees to and shall comply with and treat any and all written instructions received from such Agent Party as if they came directly from MF.

9. Obligations of NLH under the PPA

NLH acknowledges and agrees with the Security Trustee that neither this Agreement nor any Security Interests created by MF in favour of the Security Trustee shall in any way lessen or relieve NLH from its obligation to observe, satisfy and perform each and every term, condition, other provision and obligation set forth in or required to be observed by NLH in order to fulfill its obligations under the PPA or any obligations of NLH to MF.

10. Assignments to other trustees, administrative agents

MF and NLH agrees that the Security Trustee may assign the rights under this Agreement, in whole or in part, to any other trustee from time to time to the same extent, and on and subject to the same terms and conditions, as the Security Trustee may assign its rights under the Collateral Trust Deed without the consent of NLH or MF, and that each such assignee shall be entitled to rely on the representations, warranties, acknowledgements, confirmations, covenants and agreements of each of MF and of NLH herein contained. All references to the Security Trustee in this Agreement shall be deemed to refer to the Security Trustee and/or to any such assignee, and all its actions permitted to be taken by the Security Trustee under this Agreement may be taken by any such assignee. The Security Trustee shall provide notice of any such assignment to NLH.

11. Further Assurances

Each of the parties hereto agrees to do all such other acts and things and to execute all such other documents as may be reasonably required to give effect to the purpose and intent of this Agreement.

12. Grammatical variations, plural, gender, headings

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined or given extended meanings shall be construed in like manner. Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Agreement.

13. Agreements

Each reference in this Agreement to any document (including this Agreement, the PPA and any other defined term that is a document) shall be construed so as to include such document (including any attached schedules, appendices and exhibits) and each change thereto, made at or before the time in question. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this agreement and not to any particular Recital, Article, Section, subsection, paragraph, subparagraph, clause or other portion of this Agreement.

14. Severability

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable. NLH and MF shall, at the request of the Security Trustee or any Agent Party, negotiate in good faith with the requesting party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by applicable Law.

15. Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the Province of Newfoundland and Labrador, including the federal Laws of Canada applicable therein, but excluding any conflict of law rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to any matter arising under, by reason of or otherwise in respect of this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or email in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

17. Conflict

If there is any inconsistency or conflict between this Agreement and the PPA, this Agreement shall govern.

18. Notices

Any demand, notice or other communication to be made or given hereunder (“**Notice**”) shall be in writing and may be made or given by mailing it by prepaid registered mail or by transmitting it by facsimile addressed to the respective parties as follows:

(a) if to MF:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15000, Station A
St. John’s, NL A1B 0M4
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John’s, NL A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) If to the Security Trustee:

Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario
M5J 2Y1
Attention: Manager, Corporate Trust Services

Fax: 416-981-9777

(d) If to the Collateral Agent:

The Toronto-Dominion Bank, as Collateral Agent
TD Bank Tower
66 Wellington St. W., 9th Floor
Toronto, Ontario, Canada. M5K 1A2
Telephone: 416 982-2196
Attention: Michael A. Freeman, Vice President Loan Syndications-Agency
Fax: 416 944-6976
Email: michael.freeman@tdsecurities.com

(e) If to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

or to such other address, email or facsimile number as may be designated by notice given by any party to the other. Any Notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email or facsimile, will be conclusively deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by facsimile.

19. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon MF, the Security Trustee, each Agent Party and NLH and their respective successors and permitted assigns; provided that, NLH shall not assign or transfer any of their respective rights hereunder without the prior written consent of the Security Trustee and each Agent Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties have duly executed this Agreement on the date first written above.

MUSKRAT FALLS CORPORATION

Per:

Name:

Title:

Per:

Name:

Title:

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Security Trustee

Per:

Name:

Title:

Per:

Name:

Title:

TORONTO DOMINION BANK,
as Collateral Agent

Per:

Name:

Title:

Per:

Name:

Title:

NEWFOUNDLAND AND LABRADOR HYDRO

Per:

Name:

Title:

Per:

Name:

Title:

NEWFOUNDLAND AND LABRADOR HYDRO
(in its capacity as the NLSO)

and

MUSKRAT FALLS CORPORATION

and

LABRADOR TRANSMISSION CORPORATION

GENERATOR INTERCONNECTION AGREEMENT

NOVEMBER 29, 2013

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GENERATOR INTERCONNECTION AGREEMENT

THIS GENERATOR INTERCONNECTION AGREEMENT is made effective the 29th day of November, 2013 (the “**Effective Date**”).

AMONG:

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor (“**NLH**”) acting in its capacity as the **NLSO**

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**Muskrat**”)

- and -

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**Labrador Transco**”)

WHEREAS:

- A. Muskrat intends that the LTA be constructed and operated as a system upgrade, so as to permit the interconnection of the MF Plant and the NL Transmission System;
- B. Labrador Transco intends to design, develop, finance, construct, commission, own, operate, maintain and sustain the LTA in exchange for the payment by Muskrat to Labrador Transco of the amounts set forth herein;
- C. the NLSO has the responsibility and authority to oversee the safe and Reliable operation of the NL Transmission System; and
- D. NLH (in its capacity as the NLSO), Muskrat and Labrador Transco have entered into this Agreement for the interconnection of the MF Plant with the LTA and the Bulk Electric System on the terms and conditions set forth in this Agreement;

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

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

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

“15.8 Notice” has the meaning set forth in **Section 15.8(a)**;

“Acquiror”:

- (a) when used in relation to the Labrador Transco Rights, has the meaning set forth in the Labrador Transco Step-In Agreement; or
- (b) when used in relation to the Muskrat Rights, has the meaning set forth in the Muskrat Step-In Agreement;

“Actual Quarterly LTA O&M Costs” has the meaning set forth in **Section 8.1(c)(i)**;

“Actual Quarterly LTA O&M Cost Accounting” has the meaning set forth in **Section 8.1(c)(i)**;

“Adequacy” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria, taking into account scheduled and unscheduled outages of system elements;

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person;

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

“Ancillary Services” means the services that are necessary to support the transmission of Energy and Capacity from generation to load while maintaining the Reliability of a transmission system, including operating reserves, reactive supply, voltage control, blackstart capability, and regulation and frequency response;

“Annual Maintenance Plan” means an annual maintenance plan for the LTA prepared by Labrador Transco and Approved by the JOC setting out the LTA O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, LTA O&M Activities to take place in subsequent Operating Years, and containing such other information as may be required by the JOC, acting reasonably;

“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;

“**Approved by the JOC**” means approved by a decision of the JOC made in accordance with Article 3 of the JOA, and “**Approves**”, “**Approved**” and “**Approval**” in relation to the JOC shall have correlative meanings;

“**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;

“**Base Block Payments**” has the meaning set forth in the PPA;

“**Bulk Electric System**” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

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

“**CFLCo**” means Churchill Falls (Labrador) Corporation Limited, a corporation incorporated pursuant to the laws of Canada and includes its successors;

“**CFLCo Plant**” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River in the vicinity of Churchill Falls, NL;

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

“**Churchill Delivery Points**” means the points of interconnection between the CFLCo Plant and the LTA, as identified in the LTA Project Description;

“**Claiming Party**” has the meaning set forth in **Section 13.2(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;

“Collateral Agent” means the Toronto Dominion Bank, in its capacity as collateral agent under the Financing Documents, and includes any successor thereof in such capacity;

“Commissioning Date” means the date on which all of the following have occurred:

- (a) the MF Plant Commissioning has been completed;
- (b) the LTA Commissioning has been completed;
- (c) the NLSO has accepted in writing that both the MF Plant Commissioning and the LTA Commissioning have been completed; and
- (d) the Financing Parties have accepted in writing that the LTA Commissioning has been completed and the financing parties with respect to the MF Plant have accepted in writing that the MF Plant Commissioning has been completed;

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and
- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contain or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“Construction Period” means the period which commenced on December 17, 2012 and terminates on the Commissioning Date;

“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);

“**Direct Claim**” has the meaning set forth in **Section 17.4(b)**;

“**Disclosing Party**” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of such other Party;

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

“**Dispute Resolution Procedure**” has the meaning set forth in **Section 13.1(a)**;

“**Effective Date**” has the meaning set forth at the top of Page 1 of this Agreement;

“**Emera**” means Emera Inc., a company incorporated pursuant to the laws of the Province of Nova Scotia, and includes its successors;

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

“**Energy Control Centre**” means one or more energy control centres, as necessary, for the remote monitoring, control and coordinated operation of the Bulk Electric System;

“**Estimated LTA O&M Costs**” means an amount that is the good faith estimate of Labrador Transco of the LTA O&M Costs that it expects to incur in respect of a given Operating Month;

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

“**Financing**” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in Labrador Transco with respect to the LTA, whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to Labrador Transco by any Person by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance or Refinance the LTA Development Activities;

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

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

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

“Force Majeure” means an event, condition or circumstance (each an **“Event”**) beyond the reasonable control and without fault or negligence of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or inadvertent action or failure to act causing material physical damage to, or materially impairing the operation of, or access to the MF Plant or the NL Transmission System or any machinery or equipment comprising part of or used in connection with the MF Plant or the NL Transmission System;
- (e) a revocation, amendment, failure to renew or other inability to maintain in force any order, permit, licence, certificate or authorization from any Authorized Authority, unless such inability is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization;
- (f) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of Energy or Capacity that is required by the NLSO for safe and Reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices; and

- (g) any event or circumstance affecting a contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that such contractor is relieved from the performance of its obligations under a contract affecting a Party;

but none of the following shall be a Force Majeure:

- (h) lack of finances or changes in the economic circumstances of a Party;
- (i) if the Event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (j) any delay in the settlement of any Dispute;

“Forgivable Event” means any one of a Force Majeure, Planned Maintenance, a Safety Event or an action required to be taken by a Party to comply with Good Utility Practice unless such action is necessitated by or results from such Party’s failure to comply with Good Utility Practice;

“Funding Vehicle” means Muskrat Falls/Labrador Transmission Assets Funding Trust, a trust pursuant to the laws of NL settled by the MF/LTA Funding Trust Declaration dated November 1, 2013 between Nalcor, in its capacity as settlor, and BNY Trust Company of Canada, in its capacity as trustee;

“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;

“GW” means gigawatt;

“GWh” means GW hour;

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, or 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;

“**HSE**” means health, safety and the environment;

“**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);

“**Holder**” means “holder” as defined in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

“**IBA Payments**” means all payments made by Labrador Transco to aboriginal peoples pursuant to applicable impact and benefit agreements now or hereafter entered into by, or assigned to, Labrador Transco;

“**IRR**” has the meaning set forth in **Schedule 1**;

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

“**Indemnified Party**” has the meaning set forth in **Section 17.4(a)**;

“**Indemnitor**” has the meaning set forth in **Section 17.4(a)**;

“**Initial Financing**” means that portion of the Financing loaned by the Funding Vehicle to Labrador Transco;

“**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 Points” means the Churchill Delivery Points, the Muskrat Delivery Points, the LIL-LTA Interconnection Points, the LTA-NLH System Interconnection Points, and the Station Service Interconnection, all as identified in the LTA Project Description, or any other point that the Parties may agree from time to time;

“JOA” means the Joint Operations Agreement between Nalcor and Emera, dated July 31, 2012, relating, among other things, to the operation and maintenance of the LTA;

“JOC” means the Joint Operations Committee established pursuant to the JOA;

“JOC-LTA” has the meaning set forth in **Section 2.4**;

“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;

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

“LIL-LTA Interconnection Points” means the points of interconnection between the LIL and the LTA, as specified in the LTA Project Description;

“LIL LP” means Labrador-Island Link Limited Partnership, a limited partnership established pursuant to the laws of NL by the Limited Partnership Agreement dated July 31, 2012, and includes its successors;

“LIL Opco” means Labrador-Island Link Operating Corporation, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor, and includes its successors;

“LTA” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant, the LIL and certain portions of the NL Transmission System in Labrador, as more particularly described in the LTA Project Description;

“LTA-NLH System Interconnection Points” means the points of interconnection between the LTA and those portions of the NL Transmission System in Labrador, identified in the LTA Project Description;

“LTA O&M Activities” means all activities and undertakings performed by or on behalf of Labrador Transco that are required (considering the remaining LTA Service Life) to operate, maintain and sustain the LTA, including the LTA Sustaining Activities, administration and reporting, but for greater certainty excludes the LTA Development Activities;

“LTA O&M Costs” means, without duplication, with respect to each Operating Month in each Operating Year, costs incurred for:

- (a) LTA O&M Activities;
- (b) LTA Operating Financing Costs;
- (c) IBA Payments;
- (d) payments pursuant to any real property leases, licences or easements necessary for access to lands on which the LTA is located, which are not otherwise LTA Development Capital Costs;
- (e) Taxes (net of any Taxes recovered); and
- (f) any amount payable by Labrador Transco arising from an indemnity obligation under the Financing Documents;

“LTA O&M Debt” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in Labrador Transco with respect to the LTA, whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to Labrador Transco by any Person by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance LTA O&M Costs exclusive of the Financing, which are associated with an operating line of credit;

“LTA O&M Manual” means a document or a collection of documents describing the LTA basis of design and each of the major components of the LTA, the design engineer’s recommendation for operating procedures and parameters, routine preventative maintenance, HSE procedures and periodic inspections, and containing references to each original equipment manufacturer’s manuals for operating and maintenance of their provided equipment, spare parts requirements, and special tools and equipment;

“LTA O&M Standards” means the standards or requirements established or adopted and Approved by the JOC for the operation and maintenance of the LTA in accordance with Good Utility Practice for a long-term, low cost, Reliable transmission facility, including monitoring and reporting on asset performance, frequency and scope of major inspections, applicable industry standards to apply in asset operation and maintenance, completion of the LTAMP, and the maintenance of appropriate critical spares, and includes standards or criteria established by the Standards Authority which are applicable to the LTA;

“LTA Capacity” means the rated transmission capacity of the LTA that is established in accordance with Reliability Standards;

“LTA Capital Costs Recovery” has the meaning set forth in **Schedule 1**;

“LTA Commissioning” means the testing activities required to demonstrate that the LTA is ready for safe and Reliable commercial operation in accordance with the LTA Project Description;

“LTA Commissioning Period” means the period commencing on the LTA First Power Date and ending on the Commissioning Date;

“LTA Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the LTA in accordance with the LTA Project Description, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, all activities and undertakings that are LTA O&M Activities and occur prior to the Commissioning Date, the products of such activities and undertakings and the resolution of all Claims and disputes related thereto, but for greater certainty excludes the LTA O&M Activities which occur after the Commissioning Date;

“LTA Development Capital Costs” means the total of all costs incurred by or on behalf of Labrador Transco for the LTA Development Activities, including IBA Payments during the Construction Period;

“LTA Development Financing Costs” means, without duplication, all costs incurred with respect to debt and equity financing of the LTA Development Capital Costs as applicable, in the following categories:

- (a) interest expenses;
- (b) costs associated with hedging, derivative or swap transactions;
- (c) costs incurred that are directly attributable to each of the structuring, securing and arrangement of debt or equity financing, including costs associated with legal, tax, accounting, technical and other internal or third party advisors, fees and other costs payable pursuant to the Financing Documents;
- (d) underwriting, standby, commitment and other fees;
- (e) rating agency fees; and
- (f) costs of financing cash reserves required by the Financing Parties;

“LTA First Power Date” means the date which is the later of:

- (a) the date of completion of testing activities required to demonstrate that the first 315 kV transmission line of the LTA is ready for safe and Reliable transmission of Energy from a Muskrat Delivery Point to a Churchill Delivery Point; and
- (b) the date on which the NLSO gives written approval for the commencement of commercial transmission operations on the LTA;

“LTA Operating Financing Costs” means, without duplication, all costs incurred with respect to debt and equity financing of the LTA O&M Costs as applicable, in the following categories:

- (a) interest expenses;
- (b) return on equity;
- (c) costs associated with hedging, derivative or swap transactions;
- (d) costs incurred that are directly attributable to each of the structuring, securing and arrangement of debt or equity financing, including costs associated with legal, tax, accounting, technical and other internal or third party advisors and fees and other costs payable pursuant to financing documents in respect of the LTA O&M Debt;
- (e) underwriting, standby, commitment and other fees;

- (f) rating agency fees; and
- (g) costs of financing cash reserves required by applicable financing parties;

“**LTA Payments**” has the meaning set forth in **Section 8.1(b)**;

“**LTA Project Description**” means the LTA project description set forth in **Schedule 2**;

“**LTA Redemption Value**” means, at any time, a dollar value which is the sum of the following:

- (a) the costs of making all payments as are required to cause the Initial Financing to be Paid in Full, inclusive of outstanding principal, accrued interest, and any premium applicable under the Financing Documents, plus
- (b) all legal, advisory, transaction and administrative costs associated with **Section (a)** of this definition;

“**LTA Service Life**” means the period of time immediately following the LTA Commissioning, as designated by an Authorized Authority from time to time, during which the LTA can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LTA Project Description;

“**LTA Services**” has the meaning set forth in **Section 2.1**;

“**LTA Sustaining Activities**” means all activities and undertakings of a capital nature occurring during the Supply Period to replace and overhaul major assets or major components of the LTA, which do not occur annually and are necessary to sustain the LTA’s performance in accordance with Good Utility Practice, but for greater certainty excludes the LTA Development Activities;

“**LTA Transmission Capacity**” means the rated Capacity of the LTA as set forth in the LTA Project Description;

“**LTAMP**” means a long term asset management plan describing and quantifying the LTA O&M Activities for each year of the Supply Period in sufficient detail to determine the estimated annual LTA O&M Costs during the Supply Period, including:

- (a) a description of each activity, including at a minimum routine annual LTA O&M Activities, anticipated LTA Sustaining Activities and retirements which do not occur annually;
- (b) the expected year of the occurrence of each such activity; and
- (c) estimates of the annual costs applicable to each such activity;

“**Labrador Transco**” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Labrador Transco Affiliate Assignee” means an Affiliate of Labrador Transco to which all of the Labrador Transco Rights are assigned in accordance with the provisions of this Agreement;

“Labrador Transco Default” has the meaning set forth in **Section 15.3**;

“Labrador Transco Group” has the meaning set forth in **Section 17.1(a)(ii)**;

“Labrador Transco Material Default” has the meaning set forth in **Section 15.6(a)**;

“Labrador Transco Rights” has the meaning set forth in **Section 20.2(a)**;

“Labrador Transco Step-In Agreement” has the meaning set forth in **Section 22.14**;

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

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

“MF Plant” means the hydro-electric generation plant, including all apparatus and equipment to be constructed in accordance with the MF Project Description, to be owned and operated by Muskrat on the Churchill River in the vicinity of Muskrat Falls, NL for the production of Energy and Capacity and the provision of Ancillary Services;

“MF Plant Capacity” means the rated Capacity of the MF Plant that is sustainable for a continuous period of 60 minutes established in accordance with Reliability Standards;

“MF Plant Commissioning” means the start-up and testing activities required to demonstrate that all four generation units of the MF Plant are ready for safe and Reliable provision of Energy, Capacity and Ancillary Services in accordance with the MF Project Description;

“MF Plant Service Life” means the period of time immediately following the MF Plant Commissioning, as designated by an Authorized Authority from time to time, during which the MF Plant can continue to produce Energy and Capacity in accordance with Reliability Standards and the MF Project Description;

“MF Plant Site” means the land upon which the MF Plant is to be located and includes all land owned or leased, or on which Muskrat holds an easement, for the purposes of the MF Plant;

“MF Project Description” has the meaning set forth in the PPA;

“MPPA” means the Multi-Party Pooling Agreement to be entered into between the NLSO and the owners or operators of transmission facilities comprising the NL Transmission

System pursuant to which the NLSO shall exercise Operational Control of, and provide transmission service over, the NL Transmission System;

“**MVa**” means megavolt amperes;

“**MW**” means megawatt;

“**MWh**” means MW hour;

“**Maritime Link**” means the transmission facilities to be constructed in accordance with the Maritime Link Joint Development Agreement dated July 31, 2012 between Nalcor and Emera;

“**Measurement Canada**” means the agency of Industry Canada with that name, or any successor agency or entity performing similar functions;

“**Metering Equipment**” means all metering equipment necessary and used to measure Energy and Capacity, including instrument transformers, MWh-meters, data acquisition equipment, transducers and associated equipment;

“**Muskrat**” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**Muskrat Affiliate Assignee**” means an Affiliate of Muskrat to which all of the Muskrat Rights are assigned in accordance with the provisions of this Agreement;

“**Muskrat Default**” has the meaning set forth in **Section 15.1**;

“**Muskrat Delivery Points**” means the points of interconnection between the MF Plant and the LTA, as identified in the LTA Project Description;

“**Muskrat Group**” has the meaning set forth in **Section 17.2(a)(i)**;

“**Muskrat Material Default**” has the meaning set forth in **Section 15.7**;

“**Muskrat Rights**” has the meaning set forth in **Section 20.1(a)**;

“**Muskrat Step-In Agreement**” has the meaning set forth in **Section 22.14**;

“**NL**” means the Province of Newfoundland and Labrador;

“**NL Crown**” means Her Majesty in Right of NL;

“**NL Transmission System**” means electricity transmission assets in NL with a voltage level greater than or equal to 230 kV to be pooled under the MPPA;

“**NLH**” means Newfoundland and Labrador Hydro, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**NLSO**” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the systems operation department of NLH, responsible for the safe and Reliable operation of the Bulk Electric System, or a functionally separate division of NLH performing this function, and includes its successors and permitted assigns;

“**NLSO Group**” has the meaning set forth in **Section 17.1(a)(i)**;

“**Nalcor**” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act*, (Newfoundland and Labrador) and includes its successors;

“**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;

“**Notice**” means communication required or contemplated to be given by a Party to another Party under this Agreement, which communication shall be given in accordance with **Section 22.1**;

“**Operating Month**” means

- (a) in the case of the first Operating Month, the period of time commencing at the time commissioning occurs on the Commissioning Date and ending immediately prior to 12:00 noon, Newfoundland prevailing time, on the last day of the calendar month in which the day after the Commissioning Date occurs;
- (b) in the case of the last Operating Month, the period of time commencing 12:00 noon, Newfoundland prevailing time, on the last day of the previous calendar month and ending upon the termination or expiry of the Term; and
- (c) otherwise, each period of time during the Supply Period commencing 12:00 noon, Newfoundland prevailing time, on the last day of the previous calendar month and ending immediately prior to 12:00 noon, Newfoundland prevailing time, on the last day of such calendar month;

“**Operating Requirements**” means the applicable operating policies, standards and guidelines established for the Bulk Electric System, as may be revised from time to time;

“**Operating Year**” means (a) a calendar year of Operating Months during the Term except that the first Operating Year will commence on the Commissioning Date and end at 12:00 noon, Newfoundland prevailing time, on December 31 of the calendar year in which the day

after the Commissioning Date occurs, and the last Operating Year will end upon the termination or expiry of the Term, or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

“Operational Control” means the authority to perform, direct or authorize security monitoring, adjustment of generation and transmission resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for Reliability, planning assessments, coordination with external control area operators, voltage reductions and load shedding;

“PPA” means the Power Purchase Agreement of even date herewith between NLH and Muskrat relating to the purchase and sale of Energy from the MF Plant;

“PPA Services” has the meaning set forth in the PPA;

“PUB” means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

“Paid in Full” means, in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment in cash to such Person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

“Parties” means NLH (in its capacity as the NLSO), Muskrat and Labrador Transco, 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;

“Planned Maintenance” means work that is necessary for the inspection, testing, repair, maintenance or overhaul of, or modifications to, a component of the MF Plant, the LTA or any other element of the NL Transmission System where appropriate and in accordance with Good Utility Practice, which in and of itself will result in the unavailability of all or part of the affected facilities;

“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;

“**Qualified Assignee**” means a Person which is:

- (a) an administrative or security agent of a Financing Party;
- (b) with respect to the Muskrat Rights, an Affiliate or Affiliates of Muskrat, or a Holder, provided
 - (i) Muskrat and its Affiliate(s) or Muskrat and a Holder, as applicable, enter into an agreement with Labrador Transco substantially in the form of **Schedule 3**; and
 - (ii) there is a concurrent assignment to the same Person of the PPA and this Agreement; and
- (c) with respect to the Labrador Transco Rights, an Affiliate or Affiliates of Labrador Transco, or a Holder, provided
 - (i) Labrador Transco and its Affiliate(s) or Labrador Transco and a Holder, as applicable, enter into an agreement with Muskrat substantially in the form of **Schedule 3**; and
 - (ii) there is a concurrent assignment to the same Person of this Agreement and such Person adheres to the MPPA in respect of the LTA;

“**Quarter**” means the three Operating Month periods corresponding to calendar quarters (or portion thereof, as applicable) during the Supply Period;

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

“**Recipient Party**” has the meaning set forth in **Section 13.2(a)**;

“**Refinance**” means to extend, renew or refinance any indebtedness where the amount of such indebtedness outstanding on the date of such extension, renewal or refinancing is not increased;

“**Regular Business Hours**” means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

“**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;

“**Reliability**” means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security, and “**Reliable**” has a correlative meaning;

“Reliability Standards” means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

“Remedies Consultation Period” has the meaning set forth in the Financing Documents;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

“Safety Event” means an event that causes Muskrat to suspend delivery of Energy, or an event that causes the NLSO or Labrador Transco to suspend receipt of Energy into or delivery over the NL Transmission System, or any part thereof, for the purpose of safeguarding life or property by making repairs to the MF Plant or the Bulk Electric System in accordance with Good Utility Practice;

“Security” means the ability of an electric system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

“Standards Authority” means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the MF Plant, the LTA or the NL Transmission System;

“Station Service Interconnection” means the interconnection for station service at the LTA, as identified in the LTA Project Description;

“Step-In Agreements” means the Labrador Transco Step-In Agreement and the Muskrat Step-In Agreement;

“Supply Period” means the period from the Commissioning Date until January 1, 2068, provided that if the “Supply Period” as defined in the PPA is extended pursuant to Sections 13.3(a) of the PPA, then the Supply Period pursuant to this Agreement shall be extended to match the “Supply Period” as defined in the PPA;

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

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

“**Term**” has the meaning set forth in **Section 14.1(a)**;

“**third party**” means any Person that does not Control, is not Controlled by or is not under common Control with a Party;

“**Third Party Claim**” has the meaning set forth in **Section 17.4(b)**; and

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**”, “**Section**”, “**Schedule**” or “**Appendix**” followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (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 GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement 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 Effective Date, 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 set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “**approved**”, “**decided**” or “**determined**” by a Party or requires a Party’s or its Representative’s “**consent**”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.

- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 13**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

- Schedule 1 - LTA Capital Costs Recovery;
- Schedule 2 - LTA Project Description;
- Schedule 3 - Form of Assignment
- Schedule 4 - Dispute Resolution Procedure;
- Schedule 5 - General Security Agreement;
- Schedule 6 - Confidential Information;
- Schedule 7 - Labrador Transco Step-In Agreement; and
- Schedule 8 - Muskrat Step-In Agreement.

ARTICLE 2
LABRADOR TRANSCO RESPONSIBILITIES

2.1 **Labrador Transco Responsibilities**

- (a) Labrador Transco shall:
- (i) perform all required LTA Development Activities in accordance with Good Utility Practice and this Agreement;
 - (ii) provide a monthly construction report of the LTA Development Activities to Muskrat;
 - (iii) enter into the MPPA as a transmission owner and commit the LTA to be a part of the NL Transmission System;
 - (iv) subject to the MPPA, operate the LTA in accordance with Good Utility Practice;
 - (v) prepare and maintain the LTAMP and each Annual Maintenance Plan at the times and in the manner reasonably required by the JOC;
 - (vi) perform, or cause to be performed, all required LTA O&M Activities, ensuring that they are performed pursuant to the applicable Annual Maintenance Plan in accordance with standards Approved by the JOC, with only those variations as are necessary and appropriate for the LTA in accordance with Good Utility Practice;
 - (vii) in the conduct of all LTA O&M Activities, considering the LTA Service Life:
 - (viii) apply methods and practices customarily applied in other similar circumstances;
 - (ix) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
 - (x) comply with the requirements of the applicable Standards Authority; and
 - (xi) comply with Good Utility Practice;
 - (xii) provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations, including professional engineers and procurement, project management and operating and maintenance personnel;

- (xiii) obtain and maintain in good standing all required Regulatory Approvals, in accordance with **Section 2.8**;
- (xiv) comply with all Applicable Law (including the NLSO rules to the extent applicable), Operating Requirements to the extent applicable, Reliability Standards and relevant Regulatory Approvals;
- (xv) enforce Labrador Transco's real property rights against third parties;
- (xvi) interconnect the LTA at the Interconnection Points in accordance with the LTA Project Description;
- (xvii) on reasonable notice from the NLSO or Muskrat, enter into such other interconnection agreements for interconnection of the LTA with the NL Transmission System as required by the NLSO or Muskrat, acting reasonably;
- (xviii) protect the LTA from any damage caused by electrical faults or disturbances occurring on the MF Plant, the CFLCo Plant or the NL Transmission System, in accordance with Good Utility Practice;
- (xix) comply with valid requests from Authorized Authorities to produce all information relating to the LTA and this Agreement; and
- (xx) provide such other services and fulfil such other obligations as are provided for in this Agreement,

(the "**LTA Services**").

- (b) Nothing herein shall be construed as granting transmission service rights over the LTA to any Party, and for greater certainty, the LTA Services do not include or provide for any right to receive transmission service over the LTA.

2.2 Construction of the LTA

The Parties agree that the LTA is a network upgrade required for the interconnection of the MF Plant to the NL Transmission System. Labrador Transco shall design, procure and construct the LTA using commercially reasonable efforts and Good Utility Practice, in order to complete the LTA in accordance with the LTA Project Description and in coordination with the schedule for construction of the LIL and MF Plant, as provided by LIL LP and Muskrat, respectively. In the event that Labrador Transco reasonably expects that it will not be able to complete the LTA in accordance with such schedule, Labrador Transco shall promptly provide Notice to LIL LP and Muskrat advising of same, and shall undertake commercially reasonable efforts to complete the LTA by the earliest date thereafter.

2.3 Lands of Other Property Owners

If any part of the LTA is to be installed on property owned by Persons other than Labrador Transco or Muskrat, Labrador Transco shall procure from such Persons any easements or

other property rights as may be necessary to construct, operate, maintain, test, inspect, replace or remove the LTA upon such property. Labrador Transco shall cause instruments evidencing such rights to be registered or recorded in the Registry of Deeds of NL.

2.4 Establishment of JOC-LTA

Upon the expiry or termination of the JOA, or upon an earlier termination or dissolution of the JOC, a joint operations committee specifically in respect of the LTA (“**JOC-LTA**”) shall be established consisting of representatives appointed by each of Labrador Transco and Muskrat, provided that Muskrat shall have the right to delegate to NLH its right to appoint representatives to the JOC-LTA. From time to time Labrador Transco and Muskrat, or its delegate, may appoint other representatives in replacement of those initially appointed.

2.5 JOC-LTA Composition, Quorum, Duration and Procedures

- (a) Composition - Following its establishment, the JOC-LTA shall at all times be composed of two representatives appointed by each of Labrador Transco and Muskrat (or its delegate). Each of Labrador Transco and Muskrat (or its delegate) shall notify the other of the identity of its members and shall make reasonable efforts to maintain continuity of its members on the JOC-LTA. Each of Labrador Transco and Muskrat (or its delegate) shall designate one of its representatives on the JOC-LTA to be the chair and vice-chair, respectively. Where the chair or vice-chair is unable to act, he or she may from time to time delegate his or her responsibilities to another JOC-LTA representative of, respectively, Labrador Transco or Muskrat (or its delegate).
- (b) Quorum - The quorum for the transaction of business by the JOC-LTA shall be the chair and the vice-chair.
- (c) Duration - The JOC-LTA shall be established as provided for in **Section 2.4** and shall continue until the end of the Supply Period.
- (d) Procedures - Except as otherwise provided for in this Agreement, the JOC-LTA shall establish procedures for the conduct of its affairs.
- (e) References to JOC - Upon establishment of the JOC-LTA, all references to the JOC in this Agreement shall be deemed to references to the JOC-LTA.

2.6 JOC-LTA Mandate and Operation

- (a) Mandate of JOC-LTA - The provisions of the JOA that establish the role, mandate and operation of the JOC shall be deemed to be incorporated by reference into this Agreement to establish the role, mandate and operation of the JOC-LTA hereunder, except to the extent of a conflict with an express term of this Agreement, and with such adjustments as are reasonably required in order to account for the differences between the operational and commercial contexts of the JOC under the JOA on the one hand, and the JOC-LTA under this Agreement, on the other. Labrador Transco

and Muskrat agree that a primary purpose of the JOC-LTA shall be to provide a forum for Muskrat (or its delegate) to obtain information regarding financial and operational matters in respect of the LTA and to provide meaningful input into the decision-making process in respect of such matters.

- (b) Disputes - If Labrador Transco and Muskrat (or its delegate) are unable to agree upon the manner in which the JOA provisions regarding the JOC are to be incorporated in this Agreement pursuant to **Section 2.6(a)**, then such disagreement shall be a Dispute to be resolved pursuant to the Dispute Resolution Procedure.

2.7 Operation and Maintenance Contractors

Labrador Transco shall be responsible for entering into contracts as are reasonably necessary in order to permit Labrador Transco to carry out the LTA O&M Activities. No such contracting by Labrador Transco will relieve Labrador Transco from any of its obligations or liabilities pursuant to this Agreement.

2.8 Regulatory Approvals

Labrador Transco shall be responsible for making all requisite regulatory applications to applicable Authorized Authorities in connection with the LTA.

2.9 Safety

Labrador Transco shall operate and manage the LTA in a manner that is in compliance with all Applicable Law pertaining to HSE and that is designed to avoid significant, adverse and unintended impacts on the safety or health of people, property or the environment.

ARTICLE 3 INTERCONNECTION OF THE MF PLANT

3.1 Testing and Modifications

- (a) Prior to the LTA First Power Date, Labrador Transco shall test the portion of the LTA which has been connected, to ensure its safe and Reliable operation. The NLSO shall have the right to access the results of all such tests and the right to reperform the tests at its cost.
- (b) Prior to the Commissioning Date, Labrador Transco shall test the LTA and Muskrat shall test the MF Plant to ensure their safe and Reliable operation. The NLSO shall have the right to access the results of all such tests and the right to reperform the tests at its cost. Similar testing may be required by the NLSO after initial operation.
- (c) Each of Labrador Transco and Muskrat shall make any modifications to its facilities that are found to be necessary as a result of the testing contemplated by this **Section 3.1**. Each Party shall bear the cost of all such testing and modifications conducted by it. Muskrat shall generate test energy at the MF Plant only if it has

arranged with the NLSO for the delivery of such test energy to the NL Transmission System.

3.2 Post-Commercial Operation Date Testing and Modifications

Muskrat and Labrador Transco shall perform routine inspection and testing of their respective facilities and equipment in accordance with Good Utility Practice and applicable Reliability Standards as may be necessary to ensure the continued interconnection of the MF Plant with the NL Transmission System in a safe and Reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of Muskrat's or Labrador Transco's facilities as may be in accordance with Good Utility Practice. Upon request, Labrador Transco and Muskrat, as applicable, shall, within a reasonable period of time following a request, provide a requesting Party with copies of any testing reports arising out of routine or additional inspection or testing of its facilities and equipment.

3.3 Right to Inspect

The NLSO, Labrador Transco and Muskrat shall have the right, but shall have no obligation to:

- (a) observe Muskrat's or Labrador Transco's tests and/or inspection of any of its system protection and control facilities and other protective equipment, including power system stabilizers, switches, transmission line equipment and battery equipment;
- (b) review the settings of Muskrat's or Labrador Transco's system protection facilities and other protective equipment; and
- (c) review Muskrat's or Labrador Transco's maintenance records relating to the facilities referred to in **Section 3.3(a)**.

Each of the NLSO, Labrador Transco and Muskrat may exercise these rights from time to time, as it deems necessary upon reasonable Notice to the other such Parties. The exercise or non-exercise by the NLSO, Labrador Transco or Muskrat of any such right shall not be construed as an endorsement or confirmation of any element or condition of the applicable equipment or facilities, or the operation thereof, or as a warranty as to the fitness, safety, desirability or Reliability of same. Any information that a Party obtains through the exercise of any of its rights under this **Section 3.3** shall be deemed to be Confidential Information.

3.4 Relay and Control Facilities

Muskrat and Labrador Transco shall install and maintain protective relaying and auxiliary control facilities in accordance with Good Utility Practice and applicable Reliability Standards in order to permit the interconnection of the MF Plant to the LTA.

3.5 Maintenance Procedures

Muskrat shall maintain Muskrat’s owned switches, transmission line equipment, and battery equipment in accordance with Good Utility Practice and applicable Reliability Standards.

3.6 Annual Equipment Maintenance Report

On or before February 28 in each year during the Term, Muskrat and Labrador Transco shall jointly prepare and submit an annual equipment maintenance report to the NLSO outlining the maintenance completed on the equipment referenced in **Sections 3.4** and **3.5**, as applicable, during the immediately prior calendar year.

3.7 Modification to Protective and Other System Critical Equipment

Muskrat and Labrador Transco shall inform the NLSO of any changes to the MF Plant's or the LTA's electrical protection including equipment and settings. The portion of such protection that affects the Bulk Electric System shall be designed, set and installed in a manner acceptable to the NLSO. Muskrat and Labrador Transco shall obtain prior approval from the NLSO for any modification or setting changes to this protection equipment. Muskrat and Labrador Transco shall inform the NLSO of any changes to the MF Plant's or the LTA's power devices, including transformers, generators and capacitor or station service transformers.

**ARTICLE 4
SUBMISSION OF MF PLANT PLANS AND DESIGNS**

4.1 Delivery and Approval of MF Plant Plans

Upon the request of the NLSO, prior to the anticipated date of the initial synchronization of the MF Plant with the NL Transmission System, Muskrat shall deliver to the NLSO for the NLSO's written approval, the detailed design, plans, specifications and commissioning procedures for those aspects and portions of the MF Plant that the NLSO has determined may impact the power quality or the safe and Reliable operation of the Bulk Electric System. Muskrat shall obtain such approval from the NLSO prior to the initial synchronization of each unit of the MF Plant with the NL Transmission System.

4.2 Compliance with MF Plant Plans

Muskrat shall construct and test the MF Plant in accordance with the MF Project Description and Good Utility Practice. Any alterations made to the MF Project Description or made to the MF Plant after the MF Plant has been constructed that have the potential to impact the power quality or the safe and Reliable operation of the Bulk Electric System shall be subject to the prior written approval of the NLSO. The NLSO shall be permitted to be present to witness Muskrat's commissioning activities and to inspect and test any of Muskrat's equipment that may impact the power quality or the safe and Reliable operation of the Bulk Electric System. The NLSO's right to inspect and test Muskrat's equipment shall not relieve Muskrat of the responsibility to properly design, construct, operate and maintain its equipment. Muskrat is solely responsible for the ability of the MF Plant to perform in a safe and Reliable manner. Muskrat shall provide all electrical

equipment on its side of the Muskrat Delivery Points required to meet Reliability Standards, including such electrical equipment as the NLSO deems necessary from time to time during the Term, for the safe and Reliable operation of the NL Transmission System.

4.3 Disclaimer

In considering or approving any design, plans, specifications or commissioning procedures or any permitted alteration thereto, the NLSO makes no warranty or representation of adequacy whatsoever and assumes no responsibility to Muskrat, Labrador Transco or any other Person. The approval or consideration by the NLSO of any design, plan, specification or commissioning procedure shall not cause the NLSO to become liable for any Loss occasioned by Muskrat, Labrador Transco or any other Person.

ARTICLE 5 UTILITY PRACTICES AND OPERATING STANDARDS OF THE MF PLANT

5.1 Operational Procedures

Muskrat shall at all times during the Term operate and maintain the MF Plant in accordance with Good Utility Practice and applicable Reliability Standards, and shall follow all applicable operating procedures and power quality guidelines established by the NLSO for the NL Transmission System and the generation facilities interconnected thereto, including such procedures and guidelines as the NLSO may implement specifically in respect of the MF Plant from time to time. Operating procedures, among other things, provide for routine switching operations, scheduled maintenance, emergencies, including forced outages and unexpected contingencies, and for communications between Labrador Transco, the NLSO and Muskrat. These procedures enable the NLSO to exercise control when needed to ensure power quality, system safety, security and Reliability over the flow of Energy and Capacity from the MF Plant. Notwithstanding the existence of these procedures, when needed to ensure power quality, system safety, security and Reliability, the NLSO shall have the right to exercise control of the circuit breakers at or near the Muskrat Delivery Points.

5.2 Operating Standards and Protective Equipment

Except in the event of abnormal operating conditions or other causes beyond Muskrat's control acting reasonably, variations from any nominal frequency or nominal voltage shall be within normal operating ranges for which the MF Plant equipment is rated by its manufacturer. Muskrat shall install protective equipment to protect its own property and operations from variations in frequency or voltage or from other system disturbances from the NL Transmission System.

5.3 Losses Caused by MF Plant

Muskrat shall be liable for any Losses suffered by third parties caused by the MF Plant. Without limiting the generality of this **Section 5.3**, Muskrat shall indemnify Labrador Transco and the NLSO from Claims made against Labrador Transco or the NLSO by any third party as a result

of any failure by Muskrat to control and minimize interference with communications signals caused by the MF Plant.

5.4 **Risk of Loss**

Muskat shall be liable for the cost of any damage to its equipment and transformers that may occur due to the operation of the NL Transmission System including reclosing, voltage imbalance, frequency deviations, outages, and system faults.

5.5 **Right to Discontinue Receipt of Energy**

If at any time the MF Plant operates in such a manner that in the NLSO's opinion, acting in a reasonable and prudent manner in accordance with Good Utility Practice, power quality is adversely affected or the safety and Security of the Bulk Electric System is threatened, the NLSO may give notice thereof to Muskrat, which notice may be given by telephone to an employee of Muskrat who has been designated pursuant to **Section 5.6** or such other employee provided for in that Section, and Muskrat shall immediately remedy the problem. If the problem continues for more than fifteen minutes after the notice, then the NLSO may discontinue the receipt of Energy and Capacity to the extent necessary to alleviate the problem and neither Labrador Transco nor the NLSO shall be obliged to resume receipt of Energy and Capacity until Muskrat has remedied the problem. The NLSO shall provide to Muskrat a written confirmation of all notices given by telephone under this **Section 5.5** but Muskrat shall not delay taking corrective action pending its receipt of the written confirmation.

5.6 **Designation of Muskrat Representatives**

Muskat shall designate in writing to the NLSO the name and telephone number of the employee or agent to whom notices under this **Article 5** are to be given, and in default of such designation or in the event that the designated employee or agent is not immediately available to receive any such notice, Muskrat agrees the notice may be given by telephone or otherwise to any other employee or agent of Muskrat.

5.7 **Effect of Service Interruption**

If the NLSO has discontinued the receipt of Energy and Capacity from Muskrat pursuant to **Section 5.5**, or if Labrador Transco or the NLSO has discontinued the receipt of Energy and Capacity upon the request of Muskrat, such discontinuance shall not be construed as a breach of contract by Labrador Transco to receive Energy and Capacity from Muskrat under this Agreement.

5.8 **Interruption of Service**

Each Party shall have the right, without penalty, to interrupt the supply or receipt of Energy and Capacity at any time in the case of a Forgivable Event. Each Party shall limit the frequency and duration of such interruptions as much as practicable and in accordance with Good Utility Practice and, except in emergencies, shall give to the other Parties reasonable warning of its intention to interrupt its operations.

5.9 **No Liability**

If Muskrat's inability to make Energy and Capacity available or Labrador Transco's inability to receive Energy and Capacity is attributable to an interruption for any of the purposes described in **Section 5.8**, then no Party shall be liable for damages for breach of contract.

ARTICLE 6
CONSTRUCTION OR INSTALLATION OF TRANSMISSION LINES OR APPARATUS

6.1 **Land Rights and Site Access**

Upon request by Labrador Transco, Muskrat shall grant to Labrador Transco or to a Person that is the designate of Labrador Transco the right to construct transmission lines and accessory apparatus at locations approved by Muskrat on, under or over the MF Plant Site for the purpose of connecting the MF Plant to the LTA or for the purpose of connecting the LTA to the Bulk Electric System, as may be approved by an Authorized Authority. The rights granted by Muskrat to Labrador Transco or its designate pursuant to this **Section 6.1** shall include the right of access to the property of Muskrat at all times for the construction of such lines and apparatus and for the repair, maintenance and removal thereof.

6.2 **Muskrat Use of Lands**

Muskrat shall not erect any building, structure or object on, under or over any right-of-way referred to in **Section 6.1** without the written approval of Labrador Transco or its designate, as applicable, but subject to that limitation Muskrat shall be entitled to make fair and reasonable use of all lands subjected to any such right-of-way.

6.3 **Relocation of Facilities**

Any changes that Muskrat may request Labrador Transco or its designate to make to the location of any lines or apparatus constructed pursuant to **Section 6.1** shall be made by Labrador Transco or its designate, as applicable, but Muskrat shall bear the expense of any such changes.

6.4 **Removal of Facilities**

All portions of the LTA and other apparatus or equipment furnished and installed by Labrador Transco or its designate on the MF Plant Site shall remain the property of Labrador Transco, and Labrador Transco or its designate, as applicable shall be entitled to remove any portion of such facilities following the end of the Term.

ARTICLE 7
METERING AND DATA EQUIPMENT

7.1 **Metering Responsibility**

- (a) Installation of Metering Equipment - The LTA shall include Metering Equipment which shall be utilized to measure and record the Energy received by the LTA at the

Interconnection Points or delivered by the LTA to the Interconnection Points, including power quality parameters specified by the NLSO. Labrador Transco shall comply with all Applicable Law regarding the supply, installation and maintenance of the Metering Equipment which shall meet the applicable requirements established by Measurement Canada. Applicable requirements include, but are not limited to, ensuring the meters are sealed by Measurement Canada and ensuring that the re-seal/re-test of the meters is completed when the seal period expires. The Metering Equipment shall be Measurement Canada approved and Labrador Transco shall deliver to Muskrat the notice of approval number issued by Measurement Canada. The LTA shall include one or more back up meters with the capability to record at least 45 days of data at each Interconnection Point. Labrador Transco shall advise the NLSO and Muskrat of any changes to the Metering Equipment in advance or, if advance notice cannot be provided, within 48 hours of the change being made. The NLSO and Muskrat shall each be entitled, upon request, to attend at any meter re-seals/re-tests of Metering Equipment, and to receive copies of the applicable meter test certificates from Labrador Transco.

- (b) Adjustments for Transformer Losses - If the Metering Equipment is not installed immediately at an Interconnection Point, Labrador Transco, Muskrat and the NLSO shall determine appropriate adjustments to be made to account for transformer losses between the metering point and such Interconnection Point in accordance with Good Utility Practice. The calculations of such transformer losses shall be based on factory acceptance tests used to derive transformer resistance.
- (c) Access to Metering Equipment - Labrador Transco shall provide Muskrat and the NLSO access to the Metering Equipment for the purposes of inspection and verification as Muskrat or the NLSO may reasonably request from time to time. Labrador Transco shall provide copies of all material documentation and approvals received from Measurement Canada, with respect to the Metering Equipment.
- (d) Approval of Metering Equipment - Labrador Transco shall submit the Measurement Canada notice of approval number and the specifications for the Metering Equipment to the NLSO for review and comment at least 60 calendar days prior to the anticipated LTA First Power Date. If applicable, this shall include the calculation for the correction of Energy and Capacity losses between each metering point and its corresponding Interconnection Point.

7.2 **Verification**

If any Party becomes aware of any deficiency in the proper operation of any Metering Equipment, it shall promptly notify the other Parties. Labrador Transco shall attend to such remedial measures regarding the Metering Equipment as may be required to rectify the deficiency, including the repair and replacement thereof. If the deficiency is of such a nature that the amount of Energy supplied and delivered is found to have been inaccurately measured or recorded during any period, the Parties shall endeavour to reach an agreement as to the amount of Energy supplied and delivered during such period based on the load conditions prevailing during

such period based upon reasonable estimates determined in accordance with applicable procedures of the NLSO.

**ARTICLE 8
PAYMENT**

8.1 Payments during the Supply Period

- (a) Provision of LTA Services - During the Supply Period, Labrador Transco agrees to perform the LTA Services in consideration for the payment by Muskrat to Labrador Transco of the LTA Payments.
- (b) LTA Payments - Muskrat shall pay to Labrador Transco for the LTA Services on the first day of each Operating Month during the Supply Period (the “**LTA Payments**”) an amount equal to the aggregate of:
 - (i) the LTA Capital Costs Recovery (calculated and adjusted in accordance with **Schedule 1**), and
 - (ii) the Estimated LTA O&M Costs attributable to such Operating Month.
- (c) True Up of Estimated LTA O&M Costs -
 - (i) Within 60 days after the end of each Quarter during which LTA Payments have been paid by Muskrat to Labrador Transco, Labrador Transco shall deliver a Notice (the “**Actual Quarterly LTA O&M Cost Accounting**”) setting out the total actual aggregate LTA O&M Costs incurred by Labrador Transco in respect of the Operating Months comprising such Quarter (the “**Actual Quarterly LTA O&M Costs**”). The Actual Quarterly LTA O&M Cost Accounting shall set out the Actual Quarterly LTA O&M Costs incurred by Labrador Transco by component part (using the definition of LTA O&M Costs as a guide), together with such other detail and supporting documentation as reasonably required by Muskrat to review the calculation of the Actual Quarterly LTA O&M Costs.
 - (ii) Should the Actual Quarterly LTA O&M Costs exceed the Estimated LTA O&M Costs recovered by Labrador Transco for the given Quarter pursuant to **Section 8.1(b)**, Muskrat shall pay to Labrador Transco within 15 days of receipt by Muskrat of the Actual Quarterly LTA O&M Cost Accounting the amount by which the Actual Quarterly LTA O&M Costs exceeded the Estimated LTA O&M Costs for the applicable Quarter. Should the Actual Quarterly LTA O&M Costs for the given Quarter be less than the sum of the Estimated LTA O&M Costs paid by Muskrat pursuant to **Section 8.1(b)**, Labrador Transco shall within 15 days of delivery of the Actual Quarterly LTA O&M Cost Accounting, at its option, either (i) pay to Muskrat the amount by which the Estimated LTA O&M Costs for the applicable Quarter exceeded the Actual Quarterly LTA O&M Costs, or (ii) deliver to Muskrat a Notice authorizing Muskrat to credit against the next immediate LTA Payments the

amount by which the Estimated LTA O&M Costs for the applicable Quarter exceeded the Actual Quarterly LTA O&M Costs.

- (d) Irrevocable Obligation to make LTA Payments - Notwithstanding any other provision of this Agreement, including **Section 16.1**, until the date on which the Initial Financing is Paid in Full, Muskrat's obligation to make the LTA Payments shall be absolute, unconditional and irrevocable, and shall not be subject to any reductions under any circumstances whatsoever.
- (e) LTA Payments After Initial Financing Paid In Full - At all times subsequent to the Initial Financing being Paid in Full and until the end of the Supply Period, Muskrat shall pay the LTA Payments in accordance with **Section 8.1(b)** provided that Labrador Transco is not in material breach of its obligation to perform the LTA Services.

8.2 Title, Ownership Risk and Responsibility

Muskrat's irrevocable agreement to make the LTA Payments directly to Labrador Transco under this Agreement shall not grant Muskrat any Operational Control over the LTA or any right to receive transmission service offered over the LTA.

ARTICLE 9

ACCESS, RECORDS, AUDITS, SAFETY & TRANSMISSION SYSTEM OPERATIONS

9.1 Access to the LTA

Each of the NLSO and Muskrat shall have the right, upon reasonable advance Notice to Labrador Transco, to access the LTA and the sites thereof at all reasonable times for the sole purpose of examining the LTA or the construction thereof in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance notice to set forth the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with LTA activities and shall not compromise the safety of Persons or property. While accessing the LTA, all Representatives of the NLSO and Muskrat shall follow all rules and procedures established by Labrador Transco for visitors to the site including safety and security. The inspection of the LTA or the exercise of any audit rights or the failure to inspect the LTA or to exercise audit rights by or on behalf of the NLSO or Muskrat shall not relieve Labrador Transco of any of its obligations under this Agreement. No Labrador Transco Default will be waived or deemed to have been waived solely by reason of any inspection by or on behalf of the NLSO or Muskrat. In no event will any inspection by the NLSO or Muskrat hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

9.2 Access to the MF Plant

Each of the NLSO and Labrador Transco shall have the right, upon reasonable advance Notice to Muskrat, to access the MF Plant and the sites thereof at all reasonable times for the sole purpose of examining the MF Plant or the construction thereof in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable

advance Notice to set forth the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the MF Plant and shall not compromise the safety of persons or property. While accessing the MF Plant, all Representatives of the NLSO and Labrador Transco shall follow all rules and procedures established by Muskrat for visitors to the site including safety and security. The inspection of the MF Plant or the exercise of any audit rights or the failure to inspect the MF Plant or to exercise audit rights by or on behalf of the NLSO or Labrador Transco shall not relieve Muskrat of any of its obligations under this Agreement. No Muskrat Default will be waived or deemed to have been waived solely by reason of any inspection by or on behalf of the NLSO or Labrador Transco. In no event will any inspection by the NLSO or Labrador Transco hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

9.3 Records and Audits

Each Party shall keep and maintain complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be kept and maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Construction Period and the Supply Period, including major maintenance records, life cycle management records, hydrology records and design and commissioning records, shall be retained for such periods; all other documents shall be retained for at least seven years. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate operating and financial 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 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 the purposes of any such review of records provided that those employees or such auditor shall treat any information received as Confidential Information. 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.

9.4 Communications with Authorized Authorities

Each Party, with respect to the MF Plant or the LTA, shall, upon written request by another Party and to the extent permitted by Applicable Law, provide such other Party with copies of all communications and correspondence to any and all Authorized Authorities.

9.5 Safety

In the performance of all work hereunder, Muskrat and Labrador Transco shall abide by the Nalcor Work Protection Code, as amended from time to time, and the *Occupational Health and Safety Act* (Newfoundland and Labrador) and any successor legislation.

9.6 Participation in the MPPA

Labrador Transco shall enter into the MPPA prior to the LTA First Power Date, and all forecasting and scheduling in respect of the utilization of the LTA Transmission Capacity during the

LTA Commissioning Period and during the Supply Period shall be conducted pursuant to separate transmission services agreements entered into pursuant to the MPPA.

ARTICLE 10
INVOICING

10.1 **Reports and Invoices**

- (a) Monthly Invoice - Labrador Transco shall prepare and deliver to Muskrat, on or before the fifth Business Day prior to the commencement of each Operating Month, an invoice for such Operating Month setting out the LTA Payments to be paid by Muskrat in respect of such Operating Month. The invoice will include, as a separate line item, the Estimated LTA O&M Costs for such Operating Month, and otherwise be accompanied by such detail and supporting documentation as reasonably required by Muskrat to review the calculations of the Estimated LTA O&M Costs.

- (b) Monthly Metering Data Report - Labrador Transco shall prepare and deliver to Muskrat, within one Business Day after the end of each Operating Month, and otherwise upon Muskrat's reasonable request, the hourly meter data from the Metering Equipment in an electronic format for Energy delivered during such Operating Month, which Muskrat may disclose to NLH for the purposes of the PPA. The metering data report shall be prepared in accordance with Good Utility Practice, and otherwise be in the form specified by Muskrat.

- (c) Monthly Metering Statements - Labrador Transco shall prepare and deliver to Muskrat, on or before the second Business Day after the end of each Operating Month, a monthly metering statement for such Operating Month.

10.2 **Error in Invoice**

- (a) If an error is found in any invoice rendered, the necessary adjustment shall be made in the next invoice. If either Labrador Transco or Muskrat disputes, in good faith, any part of an invoice, such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Any payments that result from the resolution of such disputes shall be provided for in the next invoice following the date of such resolution. Absent manifest error in an invoice, Muskrat shall nevertheless pay to Labrador Transco the amount due as set forth in the invoice.

- (b) Either Labrador Transco or Muskrat may give written notice to the other of an error, omission or disputed amount in an invoice within 24 months after the invoice was issued, together with reasonable detail to support its claim. Except in the case of wilful misstatement or concealment, a previously issued invoice shall be deemed accurate after it has been issued, unless a Party has issued a written notice to the other disputing such invoice prior to the end of such period.

10.3 **Set-Off**

Other than as expressly set forth in this Agreement, no Party may withhold, set-off or deduct from any amount otherwise payable under this Agreement to another Party.

10.4 **Interest on Overdue Amounts**

If Muskrat fails to pay on the due date any payment or any other amount payable to Labrador Transco pursuant to this Agreement (or fails to pay within 20 Business Days of demand any sum which is expressed to be payable on demand), Muskrat shall pay interest to Labrador Transco on such unpaid amount from the due date or, as the case may be, the date of demand, to the date of actual payment (after as well as before judgment) at the default rate of interest set forth in the Financing Documents.

10.5 **Notice of Payments to the NLSO**

Forthwith on receiving any payments from Muskrat pursuant to the provisions of this Agreement, Labrador Transco shall provide written notice of receipt to the NLSO in order for the NLSO to account for such payments through credits against NLH's payment obligations arising under any transmission service agreements to which NLH may be a party.

ARTICLE 11
TAXES

11.1 **Supplies and Payments Exclusive of Taxes**

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

- (b) Governmental Charges - Subject to **Section 11.1(c)**,
 - (i) Muskrat shall pay or cause to be paid all Taxes on or with respect to the MF Plant;
 - (ii) Labrador Transco shall pay or cause to be paid all Taxes on or with respect to the LTA;
 - (iii) if Muskrat is required by Applicable Law to remit or pay Taxes which are the NLSO's or Labrador Transco's responsibility hereunder while amounts are owing under the Initial Financing, Muskrat shall pay such amounts, and the NLSO or Labrador Transco, as applicable, shall promptly reimburse Muskrat for such Taxes. If all amounts under the Initial Financing subject to the Loan Guarantee are Paid in Full, Muskrat shall first offset the amount of Taxes so recoverable from other amounts owing by it to the NLSO or Labrador Transco, as applicable, under this Agreement, and the NLSO or Labrador

Transco, as applicable, shall promptly reimburse Muskrat for such Taxes to the extent not so offset;

- (iv) if the NLSO is required by Applicable Law to remit or pay Taxes which are Muskrat's or Labrador Transco's responsibility hereunder prior to the Initial Financing being Paid in Full, the NLSO shall pay such amounts, and Muskrat or Labrador Transco, as applicable, shall promptly reimburse the NLSO for such Taxes. If all amounts under the Initial Financing are Paid in Full, the NLSO shall first offset the amount of Taxes so recoverable from other amounts owing by it to Muskrat or Labrador Transco, as applicable, under this Agreement, and Muskrat or Labrador Transco, as applicable, shall promptly reimburse the NLSO for such Taxes to the extent not so offset;
 - (v) if Labrador Transco is required by Applicable Law to remit or pay Taxes which are the NLSO's or Muskrat's responsibility hereunder, prior to the Initial Financing being Paid in Full, Labrador Transco shall pay such amounts, and the NLSO or Muskrat, as applicable, shall promptly reimburse Labrador Transco for such Taxes. If all amounts under the Initial Financing are Paid in Full, Labrador Transco shall first offset the amount of Taxes so recoverable from other amounts owing by it to Muskrat or the NLSO, as applicable, under this Agreement, and Muskrat or the NLSO, as applicable, shall promptly reimburse Labrador Transco for such Taxes to the extent not so offset; and
 - (vi) 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 11.1(a)** and **11.1(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 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;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to another 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 from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 11.3**; and
 - (iv) if one Party incurs an expense as agent for another 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 co-operate with the other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 11.1(b)** and **11.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) The NLSO is solely responsible for the payment of income taxes and HST payable by the NLSO;
 - (ii) Muskrat is solely responsible for the payment of income taxes and HST payable by Muskrat; and
 - (iii) Labrador Transco is solely responsible for the payment of income taxes and HST payable by Labrador Transco.

11.2 **Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 11.2(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.

11.3 **Invoicing Tax Requirement**

All billing statements or invoices, (in either case referred to herein as an “**invoice**”), as applicable, issued pursuant to **Article 9** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

11.4 Payment and Offset

- (a) Subject to **Section 11.4(b)**, Taxes collectible by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 20 Business Days of receipt of an invoice.
- (b) Provided all amounts due under the Initial Financing are Paid in Full, a Party may offset amounts of Taxes owing to another 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.

11.5 HST Registration Status and Residency

- (a) Muskrat represents and warrants that it is registered for purposes of the HST and that its registration number is 8312 27830 RT0001, and undertakes to advise the NLSO and Labrador Transco of any change in its HST registration status or number.
- (b) The NLSO represents and warrants that it is registered for purposes of the HST and that its registration number is 1213 94928 RT0001, and undertakes to advise Muskrat or Labrador Transco of any change in its HST registration status or number.
- (c) Labrador Transco represents and warrants that it is registered for purposes of the HST and that its registration number is 8394 58973 RT0001, and undertakes to advise the NLSO or Muskrat of any change in its HST registration status or number.
- (d) Muskrat represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise the NLSO and Labrador Transco of any change in its residency status.
- (e) The NLSO represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Muskrat and Labrador Transco of any change in its residency status.
- (f) Labrador Transco represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise the NLSO and Muskrat of any change in its residency status.

11.6 **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 no 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).

11.7 **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 Parties, in writing, the following additional information for the purposes of assisting the other Parties 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 a non-resident of 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 a non-resident of Canada for the purposes of the Income Tax Act; and
- (c) any other fact or circumstance within the knowledge of a Party which another 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 11.7**, each Party undertakes to advise the other Parties, in a timely manner, of any material changes to the matters described in **Sections 11.7(a)** through **11.7(c)**.

11.8 **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 another Party to an Authorized Authority without the prior written consent of such other Party.

11.9 **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 Laws, from any compensation payable pursuant to this Agreement to another Party 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.

11.10 **Tax Indemnity**

Each Party (in this **Section 11.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Parties from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 11** 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 11.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Parties harmless from and against:

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

11.11 **Additional Tax Indemnity**

If one Party (in this **Section 11.11** referred to as “**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 Parties, and to indemnify and save harmless the other Parties 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 11.11** referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Parties to the First Party, provided that:

- (a) any such amount payable by the other Parties pursuant to this **Section 11.11** shall be reduced by the amount of such Taxes, if any, which the other Parties are able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this **Section 11.11** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Parties to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Parties (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

11.12 **Assignment**

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been approved in accordance with this Agreement, 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 11** and **Article 20**.

ARTICLE 12
INSURANCE

12.1 **Insurance Program**

- (a) Labrador Transco shall, as it deems necessary, acting reasonably, place or cause to be placed for the duration of this Agreement operational property and liability insurances as are normally necessary for a facilities of similar size and design to the LTA and Good Utility Practice, including:
 - (i) All-risk Course of Construction (Builder's Risk);
 - (ii) All Risk Property & Equipment Insurance;
 - (iii) Third Party Liability Insurance; and
 - (iv) such other coverages as may be deemed appropriate in the opinion of Labrador Transco, acting reasonably, giving due consideration to the inherent risks of the LTA and the factors mentioned in **Section 12.2**.

- (b) Muskrat shall, as it deems necessary, acting reasonably, place or cause to be placed for the duration of this Agreement operational property and liability insurances as are normally necessary for a facility of similar size and design to the MF Plant and Good Utility Practice, including:
 - (i) All-risk Course of Construction (Builder's Risk);
 - (ii) All Risk Property & Equipment Insurance;
 - (iii) Third Party Liability Insurance; and
 - (iv) such other coverages as may be deemed appropriate in the opinion of Muskrat, acting reasonably, giving due consideration to the inherent risks of the MF Plant and the factors mentioned in **Section 12.2**.

12.2 Coverages, Limits, Deductibles and Exclusions

In each case, the insurance placed by or on behalf of Labrador Transco or Muskrat shall provide for coverages, limits, deductibles, exclusions and other terms and conditions as may be appropriate for the LTA and the MF Plant, respectively, giving due consideration to:

- (a) requirements of the Financing Documents;
- (b) the values at risk and the maximum loss exposures reasonably anticipated at the time the insurance coverage is placed;
- (c) exposures to third party liabilities;
- (d) commercial availability and commercially reasonable cost of such insurance;
- (e) the reasonable practices employed by similar entities and similar projects in Canada; and
- (f) in the case of the LTA, Labrador Transco's financial ability and desire to retain or self-insure certain risks, and in the case of the MF Plant, Muskrat's financial ability and desire to retain or self-insure certain risks.

12.3 Provisions to be Included in Insurance Policies Procured by Labrador Transco

All insurance procured by Labrador Transco pursuant to this **Article 12** shall:

- (a) name Muskrat and NLH, their Affiliates as appropriate, and their respective directors, officers and employees as named insureds with respect to the third party liability insurance policy referred to in this **Article 12**;
- (b) be at Labrador Transco's expense and will be primary, non-contributing with, and not excess of, any other insurance available to Muskrat or NLH;

- (c) provide for 30 days' prior notice to Muskrat and NLH in the event of cancellation or material change that reduces or restricts the Insurance provided that if insurers shall provide notice earlier than 30 days, Labrador Transco shall immediately advise Muskrat and NLH of same;
- (d) remain in full force and effect at all times during the Term;
- (e) be for the mutual benefit of Labrador Transco, Muskrat and NLH and their respective Affiliates; and
- (f) include a severability of interest clause whereby such policy would cover claims of one named insured against another named insured.

12.4 **Provisions to be Included in Insurance Policies Procured by Muskrat**

All insurance procured by Muskrat pursuant to this **Article 12** shall:

- (a) name Labrador Transco and NLH, their Affiliates as appropriate, and their respective directors, officers and employees as named insureds with respect to the third party liability insurance policy referred to in this **Article 12**;
- (b) be at Muskrat's expense and will be primary, non-contributing with, and not excess of, any other insurance available to Labrador Transco or NLH;
- (c) provide for 30 days' prior notice to Labrador Transco and NLH in the event of cancellation or material change that reduces or restricts the Insurance provided that if insurers shall provide notice earlier than 30 days, Muskrat shall immediately advise Labrador Transco and NLH of same;
- (d) remain in full force and effect at all times during the Term;
- (e) be for the mutual benefit of Labrador Transco, Muskrat and NLH and their respective Affiliates; and
- (f) include a severability of interest clause whereby such policy would cover claims of one named insured against another named insured.

12.5 **Lender Requirements**

Musktrat and Labrador Transco shall co-operate fully with the other Parties and shall assist the other Parties in complying with obligations imposed by the Financing Parties relating to the insurance coverage provided pursuant to this **Article 12**, including naming the Financing Parties as first loss payees, and the use of insurance proceeds in the event of a catastrophic loss.

12.6 **Contractors**

Contractors, to the extent their contracts require them to procure insurance, shall be required to comply with such insurance provisions as may be required.

12.7 **Evidence of Insurance**

- (a) If requested by Muskrat, Labrador Transco shall provide satisfactory evidence of insurance procured by it pursuant to this **Article 12** in the form of a certificate of insurance when obtained and thereafter annually upon renewal of such insurance.
- (b) If requested by Labrador Transco, Muskrat shall provide satisfactory evidence of insurance procured by it pursuant to this **Article 12** in the form of a certificate of insurance when obtained and thereafter annually upon renewal of such insurance.

12.8 **Placement of Required Insurance**

- (a) If Labrador Transco fails to obtain or maintain any insurance required to be maintained by it hereunder, Muskrat may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of Muskrat.
- (b) If Muskrat fails to obtain or maintain any insurance required to be maintained by it hereunder, Labrador Transco may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of Labrador Transco.

12.9 **Effect of Failure to Insure**

Notwithstanding **Section 12.8**, none of the obligations of Labrador Transco or Muskrat in this Agreement shall be reduced, or in any way affected, or diminished in any respect, by a failure of Labrador Transco or Muskrat to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by a denial of coverage of any insurance, nor shall Labrador Transco or Muskrat be entitled to any indemnity or contribution as a result of any such failure to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by any denial of coverage of any insurance.

12.10 **Site Visits**

- (a) Muskrat shall provide to Labrador Transco evidence of liability insurance and automobile liability insurance in anticipation of any visits to any Labrador Transco facility including the LTA. Muskrat shall, under the PPA, require that NLH shall provide to Labrador Transco evidence of liability insurance and automobile liability insurance in anticipation of any visits to any Labrador Transco facility including the LTA.
- (b) Labrador Transco shall provide to Muskrat evidence of liability insurance and automobile liability insurance in anticipation of any visits to any Muskrat facility including the MF Plant.

12.11 **Corporate Policies**

It is understood and agreed that Nalcor may provide the coverage provided for in this Agreement through policies covering other assets and/or operations operated by Nalcor and its Affiliates.

ARTICLE 13
DISPUTE RESOLUTION

13.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set forth in **Schedule 4** (the “**Dispute Resolution Procedure**”).
- (b) Disputed Payment - Subject to **Section 13.3**, if there is a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the undisputed portion of such payment.
- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 13**, without prejudice to any other Party’s rights pursuant to this Agreement.

13.2 **Procedure for Inter-Party Claims**

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against another Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly give Notice to 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 of the Claiming Party to promptly give Notice.
- (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.

13.3 LTA Payments Not Affected

If there is a Dispute concerning any LTA Payments payable by Muskrat to Labrador Transco hereunder and at the time such Dispute arises the Initial Financing has not been Paid in Full, Muskrat shall pay the whole of such LTA Payments in full, prior to initiating any Dispute Resolution Procedure relating thereto, subject only to the right of Muskrat to be reimbursed by Labrador Transco if and as the Dispute Resolution Procedure may require. Muskrat agrees that any payment to be made to it as a result of a finding pursuant to the Dispute Resolution Procedure that Muskrat should be reimbursed shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents. All such amounts owing to Muskrat shall be subject to interest from the original due date to the date of actual payment (after as well as before judgment) at the Prime Rate plus 3%.

13.4 Directions Under Dispute Resolution Procedure

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

**ARTICLE 14
TERM AND TERMINATION**

14.1 Term & Termination

- (a) This Agreement shall become effective on the Effective Date and shall continue, unless terminated earlier by written agreement of the Parties in accordance with this Agreement, until the earlier of (i) the end of the LTA Service Life, and (ii) the end of the MF Plant Service Life, provided that the obligations to make the LTA Payments shall continue until 50 years following the Commissioning Date (the “**Term**”).
- (b) Prior to the Initial Financing being Paid in Full or expiry of the Supply Period, the Parties may not terminate this Agreement or the obligation to pay the LTA Payments without the approval of the Financing Parties.
- (c) Following the Supply Period, provided that the Initial Financing is Paid in Full, any Party may terminate this Agreement upon 90 days Notice, which termination shall take effect upon commencement of a replacement generator interconnection agreement in accordance with **Section 14.2(d)**.

14.2 Effect of Termination of Agreement

When this Agreement terminates:

- (a) each Party shall promptly return to the other Parties all Confidential Information of the other Parties in the possession of such Party, and destroy any internal documents that contain any Confidential Information of the other Parties (except such internal documents as are reasonably required for the maintenance of proper corporate records and/or to comply with Applicable Law, which shall continue to be held in accordance with the provisions of **Schedule 4**);
- (b) no Party shall have any obligation to the other Parties in relation to this Agreement or such termination, except as set forth herein;
- (c) the payment obligations of a Party outstanding at termination shall survive until satisfied, and those provisions of this Agreement which expressly survive termination of this Agreement shall survive as expressly stated; and
- (d) where Notice is given in accordance with **Section 14.1(c)**, Muskrat and Labrador Transco shall enter into a new generator interconnection agreement in respect of the ongoing interconnection of the MF Plant to the LTA. Such agreement shall be in the form of any standard form of generator interconnection agreement as is then in use in NL to govern the interconnection of generation facilities to the NL Transmission System, or, if there is no applicable standard form of generator interconnection agreement in use in NL at such time, the terms of the agreement to be entered into by Muskrat and Labrador Transco shall be based upon commercially reasonable provisions as are then commonly used in comparable agreements by North American utilities, including NLH. Muskrat and Labrador Transco shall each use commercially reasonable efforts to reach agreement with the other, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. In the event that Muskrat and Labrador Transco cannot reach agreement on all of the terms and conditions to be included in such generator interconnection agreement within 90 days following Notice given in accordance with **Section 14.1(c)**, then the failure to reach agreement in respect of the outstanding terms and conditions of the generator interconnection agreement shall be deemed to be a “Dispute” to be resolved pursuant to Section 5.1 of the Dispute Resolution Procedure. In such event, Muskrat and Labrador Transco shall be deemed to have agreed to resolve the Dispute by arbitration, in accordance with Section 5.1(e) of the Dispute Resolution Procedure. To the extent possible, Muskrat and Labrador Transco shall agree on as many of the terms and conditions as possible and limit any Dispute to only those terms and conditions that cannot be agreed.

ARTICLE 15
DEFAULT AND REMEDIES

15.1 **Muskrat 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 Muskrat under this Agreement (a “**Muskrat Default**”):

- (a) Muskrat 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 Labrador Transco or the NLSO, as applicable, that such amount is due and owing;
- (b) Muskrat is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 15.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Muskrat of Notice thereof from Labrador Transco or the NLSO, as applicable, unless the cure reasonably requires a longer period and Muskrat is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Labrador Transco or the NLSO, as applicable;
- (c) any representation or warranty made by Muskrat in this Agreement is false or misleading in any material respect;
- (d) Muskrat 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; or
- (e) any Insolvency Event occurs with respect to Muskrat.

15.2 **Remedies upon Muskrat Default**

- (a) General - Subject to **Sections 8.1(d)**, **14.1** and **14.2** and **Article 18**, upon the occurrence of a Muskrat Default and at any time thereafter, provided the NLSO or Labrador Transco, as applicable, 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) the NLSO or Labrador Transco, as applicable, shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to the NLSO or Labrador Transco, as applicable, are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to **Section 8.1(d)**, **14.1** and **14.2** and **Article 18**, the NLSO or Labrador Transco, as applicable, may recover all Losses suffered by the NLSO or Labrador Transco, as applicable, that result from a Muskrat Default, including, for the avoidance of doubt, any costs or expenses (including reasonable legal fees and expenses on a solicitor and own client basis) reasonably incurred by the NLSO or Labrador Transco, as applicable, to recover any amounts owed to the NLSO or Labrador Transco, as applicable, by Muskrat under this Agreement.

15.3 Labrador Transco 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 Labrador Transco under this Agreement (a “**Labrador Transco Default**”):

- (a) Labrador Transco 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 Muskrat or the NLSO, as applicable, that such amount is due and owing;
- (b) Labrador Transco is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 15.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Labrador Transco of Notice thereof from Muskrat or the NLSO, as applicable, unless the cure reasonably requires a longer period and Labrador Transco is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Muskrat or the NLSO, as applicable;
- (c) any representation or warranty made by Labrador Transco in this Agreement is false or misleading in any material respect;
- (d) Labrador Transco 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 Labrador Transco; or
- (f) Labrador Transco is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation by Labrador Transco arising from an indemnity obligation set forth in the Financing Documents.

15.4 **Remedies upon Labrador Transco Default**

- (a) General - Subject to **Section 8.1(d)**, **14.1** and **14.2** and **Article 18**, upon the occurrence of a Labrador Transco Default and at any time thereafter, provided Muskrat or the NLSO, as applicable, is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
- (i) Muskrat or the NLSO, as applicable shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Muskrat or the NLSO, as applicable, are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to **Section 8.1(d)**, **14.1** and **14.2** and **Article 18**, Muskrat or the NLSO, as applicable, may recover all Losses suffered by Muskrat or the NLSO, as applicable, that are due to a Labrador Transco 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 Muskrat or the NLSO, as applicable, to recover any amounts owed to Muskrat or the NLSO, as applicable, by Labrador Transco under this Agreement.

15.5 **Remedies Assigned to NLH**

- (a) Assignment to NLH - During the Supply Period, Muskrat shall have the right and the obligation pursuant to the PPA to assign to NLH, in NLH's capacity as a party to the PPA and not in its capacity as the NLSO, the rights and obligations set forth in **Sections 15.5, 15.6, 15.7** and **15.8**, provided that NLH assumes the obligations applicable to it pursuant to **Sections 15.5, 15.6, 15.7** and **15.8**. The rights so assigned to NLH by Muskrat shall be independently enforceable by NLH against Labrador Transco and Muskrat shall ensure that the obligations so assumed by NLH are independently enforceable by Labrador Transco against NLH. Any Dispute in respect of such assigned rights and assumed obligations shall be resolved in accordance with the Dispute Resolution Procedure.
- (b) Not Rights or Obligations of the NLSO - The rights and obligations which may be assigned to and assumed by NLH in **Sections 15.5, 15.6, 15.7** and **15.8**, shall be, upon assignment and assumption, rights and obligations of NLH in its own capacity, and not in its capacity as the NLSO.

- (c) Non-Assignment by NLH - NLH shall not assign any of the rights assigned to it under this Agreement as contemplated by this **Section 15.5**. Any purported assignment in contravention of this **Section 15.5(c)** will be null and void. This **Section 15.5(c)** shall not derogate from the assignment rights of the NLSO provided for by **Section 20.3(a)**.

15.6 **Labrador Transco Material Default**

- (a) Each time during the Supply Period, if a default notice is provided under either the Labrador Transco Step-In Agreement or if as a result of a Labrador Transco Default, the PPA Services cannot be provided, in whole or in part, by Muskrat to NLH, or the LTA is not available for transmission of Energy at the LTA Transmission Capacity for 24 consecutive hours or 24 non-consecutive hours in any seven day period (each a “**Labrador Transco Material Default**”), then, NLH may give Notice from time to time that it intends to invoke its rights under this **Section 15.6(a)** (each a “**Labrador Transco Material Default Notice**”). If, within two days from the delivery of a Labrador Transco Material Default Notice, Labrador Transco does not cure the Labrador Transco Material Default to the satisfaction of NLH acting reasonably, NLH may at the date specified in such Labrador Transco Material Default Notice, assume Operational Control of the LTA and if it does so, NLH shall be entitled to the corresponding rights and shall assume the corresponding obligations of Labrador Transco under this Agreement, in accordance with **Section 15.6(b)**. Notwithstanding any Dispute that may be initiated by Labrador Transco concerning the determination of a Labrador Transco Material Default, NLH shall be entitled to assume Operational Control of the LTA. If the Dispute Resolution Procedure determines that Labrador Transco had not committed a Labrador Transco Material Default, then NLH shall return, and Labrador Transco shall assume, Operational Control of the LTA in accordance with **Section 15.6(c)**, mutatis mutandis. NLH shall pay to Labrador Transco any Losses incurred by Labrador Transco resulting from NLH’s improper assumption of Operational Control.
- (b) If NLH assumes Operational Control pursuant to **Section 15.6(a)**, Labrador Transco shall immediately provide to NLH all necessary information, passwords, access and keys necessary for NLH to exercise Operational Control of the LTA, and shall provide all assistance reasonably necessary to assist transition to NLH of Operational Control. Upon assumption by NLH of Operational Control of the LTA pursuant to **Section 15.6(a)**, and thereafter until NLH returns Operational Control of the LTA pursuant to **Section 15.6(c)**,
- (i) NLH shall have the right, subject to any Operational Control transferred to the NLSO under the MPPA, to perform the LTA O&M Activities if it so elects by Notice to Labrador Transco, and if it so elects, it shall perform the LTA O&M Activities in accordance with Good Utility Practice;
- (ii) NLH shall have the right to enforce and enjoy all of the rights that Labrador Transco has or may have under this Agreement in respect of Operational

Control to the same extent and in the same manner as if it were an original party thereto in the place of Labrador Transco;

- (iii) Labrador Transco shall continue to perform all its obligations under this Agreement which do not constitute the exercise of Operational Control or which NLH does not elect to perform in accordance with **Section 15.6(b)(i)**;
 - (iv) subject to the limitations of the LTA, NLH shall perform Operational Control and the LTA O&M Activities, to the extent it has elected to perform the LTA O&M Activities pursuant to **Section 15.6(b)(i)**, in a manner which enables Labrador Transco to fulfill its obligations under transmission services agreements entered into by Labrador Transco pursuant to the MPPA from time to time;
 - (v) NLH shall be liable to and indemnify Labrador Transco for Labrador Transco's Losses resulting from NLH exercising Operational Control of the LTA or performing the LTA O&M Activities, during such period, but only to the extent that same result from (A) NLH's breach of **Section 15.6(b)(iv)** or (B) NLH's wilful acts or omissions or NLH's gross negligence;
 - (vi) NLH shall be liable to and indemnify Muskrat for Muskrat's Losses under the GIA resulting from NLH exercising Operational Control of the LTA or performing the LTA O&M Activities, during such period, but only to the extent that same result from (A) NLH's breach of **Section 15.6(b)(iv)** or (B) NLH's wilful acts or omissions or NLH's gross negligence;
 - (vii) Muskrat acknowledges and agrees that the rights of NLH under this **Section 15.6** shall be independent of those of Labrador Transco under this Agreement and may be enforced by NLH independently of Labrador Transco;
 - (viii) upon receipt by Muskrat of instructions from NLH pursuant to its exercise of rights pursuant to this **Section 15.6**, Muskrat agrees to accept such instructions as if they had come directly from Labrador Transco; and
 - (ix) Labrador Transco shall pay to NLH all costs and expenses in performing LTA O&M Activities while NLH has Operational Control of the LTA; and
 - (x) in order to ensure non-interruption of the LTA Payments prior to the Initial Financing being Paid in Full, costs and expenses paid to NLH pursuant to **Section 15.6(b)(ix)** shall be included in LTA O&M Costs, which Muskrat shall continue to pay to Labrador Transco as part of the LTA Payments, and which NLH shall continue to pay to Muskrat as part of the Base Block Payments.
- (c) At any time following each Labrador Transco Material Default where NLH assumes Operational Control of the LTA and performs LTA O&M Activities pursuant to this **Section 15.6**, NLH may return Operational Control of the LTA to Labrador Transco on not less than five Business Days Notice. Upon the date specified in each such

Notice, NLH shall provide Labrador Transco all necessary information, passwords, access and keys necessary for Labrador Transco to resume Operational Control of the LTA, whereupon Labrador Transco shall assume Operational Control of the LTA and perform all of its obligations under this Agreement, including the continued performance of those performed by NLH while it had assumed Operational Control of the LTA.

- (d) Security Interest - As security for Losses of Muskrat and NLH which may arise from a Labrador Transco Default, and provided that the obligation to pay the LTA Redemption Value in **Section 15.8(a)** is also assumed by NLH in the event it fails to pay Muskrat under the PPA, Labrador Transco shall enter into the general security agreement in the form of **Schedule 5** and grant to Muskrat, with a right to assign to NLH pursuant to the PPA, a general security interest in the LTA within the meaning of the *Personal Property Security Act* (Newfoundland and Labrador). For clarity, the security interest granted by Labrador Transco shall in all respects be subject and subordinate to the security interests granted by the Financing Documents.

15.7 Muskrat Material Default

Labrador Transco consents to the partial assignment of this Agreement from Muskrat to NLH as set forth in this **Section 15.7**. Each time during the Supply Period, if a default notice is provided under either the Muskrat Step-In Agreement or if as a result of a Muskrat Default or a default of Muskrat pursuant to the PPA, the PPA Services cannot be provided by Muskrat to NLH, in whole or in part, or the LTA is not available for transmission of Energy at the LTA Transmission Capacity for 24 consecutive hours or 24 non-consecutive hours in any seven day period (each a "**Muskrat Material Default**"), provided that NLH has given notice as required by Section 14.6 of the PPA (each a "**Muskrat Material Default Notice**") and has also provided the Muskrat Material Default Notice to Labrador Transco, and provided that NLH assumes Operational Control of the MF Plant, NLH shall be entitled to the corresponding rights and shall assume the corresponding obligations of Muskrat under this Agreement, until such time as NLH has provided Notice to Labrador Transco that it has relinquished Operational Control of the MF Plant in accordance with Section 14.6(c) of the PPA.

15.8 Labrador Transco Specific Remedies upon Muskrat Failure to Make LTA Payments

- (a) Failure to make LTA Payments - If Muskrat is in default of its obligation to make the LTA Payments as a result of NLH's failure to make the Base Block Payments, and provided that Labrador Transco is in material compliance with its obligations under the GIA, Labrador Transco may give Notice (a "**15.8 Notice**") to Muskrat that it intends to invoke its rights under this **Section 15.8(a)**. If, within 10 days from the delivery of such 15.8 Notice, Muskrat has not cured such default and has not paid to Labrador Transco all Losses arising from such default:
- (i) Muskrat shall pay to Labrador Transco as liquidated damages a lump sum amount equal to the LTA Redemption Value (as at the date of payment of such amount) prior to the later of (A) 180 days following receipt of the 15.8

Notice, or (B) completion of any Remedies Consultation Period arising from such non-payment within the Remedies Consultation Period;

- (ii) on receipt by Labrador Transco of payment pursuant to **Section 15.8(a)(i)**:
 - (A) Labrador Transco shall immediately remit such payment to the appropriate Financing Parties with respect to the Initial Financing, causing the Initial Financing to be Paid in Full;
 - (B) Labrador Transco shall recalculate the future LTA Capital Costs Recovery pursuant to **Schedule 1** to reflect payment of the LTA Redemption Value and future LTA Payments shall be adjusted accordingly;
 - (C) payment of the LTA Redemption Value shall be Labrador Transco's sole and exclusive right, remedy and recourse for Labrador Transco's Losses attributable to Muskrat's default of its obligation to pay the Initial Financing portion of the LTA Payments; and
 - (D) subject to **Section 15.8(a)(ii)(C)**, nothing in this **Section 15.8** shall limit or impair Labrador Transco's right at law, equity or under this Agreement to seek compensation for Losses arising from failure to pay the full LTA Payments, as adjusted.
- (iii) Each of the Parties agrees that to the extent any damages required to be paid under this **Section 15.8(a)** are expressly stated to be liquidated damages, Muskrat and Labrador Transco agree that the mechanisms provided for in this Agreement to compute, estimate and agree upon the amount of such damages provide for a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences or amount of such Losses. Each of the Parties agree that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect the Parties from uncertainties. The obligation of a Party to pay and of a Party to accept such liquidated damages, as applicable, shall be legally enforceable and binding on the Parties.
- (b) Muskrat acknowledges, and shall cause NLH to acknowledge, that failure to make payment pursuant to **Section 15.8(a)(i)** may result in an Agent Party (as such term is defined in the Step-In Agreement) exercising rights pursuant to the Step-In Agreement.

15.9 **Equitable Relief**

Prior to the Initial Financing being Paid in Full, no Party shall have any right, remedy or recourse to terminate this Agreement for any reason, without the consent of the Financing Parties. Subject to the foregoing sentence, nothing else in this **Article 15** will limit or prevent a

Party from seeking equitable relief, including specific performance or a declaration to enforce another Party's obligations under this Agreement.

ARTICLE 16
FORCE MAJEURE

16.1 **Effect of Invoking Force Majeure and Notice**

- (a) If by reason of a Force Majeure event, a Party is not reasonably able to fulfill an obligation, other than an obligation to pay or spend money including **Section 8.1(d)**, in accordance with the terms of this Agreement, then such Party shall:
 - (i) forthwith provide Notice to the other Parties of such Force Majeure, or orally so notify such other Parties (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
 - (ii) subject to **Article 18**, be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the failure 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 Parties with prompt Notice of the cessation or partial cessation of such Force Majeure; and
 - (vi) not be responsible or liable to the other Parties for any loss or damage that the other Parties may suffer or incur as a result of such Force Majeure.

- (b) Notwithstanding **Section 22.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a duration of less than 24 hours shall be given to an operational representative of the receiving Parties. Each Party shall provide telephone and other electronic contact information to the other for the purposes of this Section prior to the Effective Date. Either Party may change such contact information from time to time by giving Notice of such change to the other Parties in accordance with **Section 22.1**.

ARTICLE 17
LIABILITY AND INDEMNITY

17.1 **Muskrat Indemnity**

- (a) Muskrat shall indemnify, defend, reimburse, release and save harmless
- (i) the NLSO and its Representatives, and the successors and permitted assigns of each of them (“**NLSO Group**”), and
 - (ii) Labrador Transco and its Representatives, and the successors and permitted assigns of each of them (“**Labrador Transco Group**”),
- from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any member of the NLSO Group or the Labrador Transco Group, as applicable, by or in favour of a third party (including those Claims arising in favour of or brought by or on behalf of any member of the Muskrat Group)) based upon, in connection with, relating to or arising out of:
- (iii) any inaccuracy or breach of any representation or warranty made by Muskrat in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (iv) any breach or failure to perform or comply with any agreement, covenant or obligation of Muskrat in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
 - (v) any gross negligence or wilful misconduct by or on behalf of any member of the Muskrat Group occurring in connection with, incidental to or resulting from Muskrat’s obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.
- (b) Notwithstanding **Section 17.1(a)**, Muskrat shall have no obligation to indemnify, defend, reimburse, release or save harmless any member of the NLSO Group or the Labrador Transco Group in respect of, or to be liable for Claims:
- (i) to the proportionate extent that such Claims result from the gross negligence or wilful misconduct of any member of the NLSO Group or the Labrador Transco Group, as applicable; and
 - (ii) in respect of Losses to the personal property, facilities, equipment, materials or improvements of any member of the NLSO Group or the Labrador Transco Group, as applicable.

17.2 **Labrador Transco Indemnity**

- (a) Labrador Transco shall indemnify, defend, reimburse, release and save harmless

- (i) Muskrat and its Representatives, and the successors and permitted assigns of each of them, (“**Muskrat Group**”), and
- (ii) the NLSO Group,

from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any member of the Muskrat Group or the NLSO Group, as applicable, by or in favour of a third party (including those Claims arising in favour of or brought by or on behalf of any member of the Labrador Transco Group)) based upon, in connection with, relating to or arising out of:

- (iii) an inaccuracy or breach of any representation or warranty made by Labrador Transco in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (iv) any breach or failure to perform or comply with any agreement, covenant or obligation of Labrador Transco in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
 - (v) any gross negligence or wilful misconduct by or on behalf of any member of the Labrador Transco Group occurring in connection with, incidental to or resulting from Labrador Transco’s obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.
- (b) Notwithstanding **Section 17.2(a)**, Labrador Transco shall have no obligation to indemnify, defend, reimburse, release or save harmless any member of the Muskrat Group or the NLSO Group in respect of, nor to be liable for, Claims:
- (i) to the proportionate extent that such Claims results from the gross negligence or wilful misconduct of any member of the NLSO Group or the Muskrat Group, as applicable; or
 - (ii) in respect of Losses to the personal property, facilities, equipment, materials or improvements of any member of the NLSO Group or the Muskrat Group, as applicable.

17.3 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 MF Plant Site (including, with respect to any member of the Muskrat Group, such property of such member of the Muskrat Group, with respect to any member of the NLSO Group, such property of such member of the NLSO Group, and with respect to any member of the Labrador Transco Group, such property of such member of the Labrador Transco Group), howsoever incurred.

17.4 **Indemnification Procedure**

- (a) Generally - Each Party (each, an “**Indemnitor**”) shall indemnify and hold harmless the other Parties and the other Persons as set forth in **Sections 17.1** or **17.2**, as applicable, (each an “**Indemnified Party**”) as provided therein in the manner set forth in this **Section 17.4**.

- (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 Parties. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a “**Third Party Claim**”) or whether the Claim does not so arise (a “**Direct Claim**”). The failure to promptly give the Indemnitor Notice 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 of the Indemnified Party to promptly give Notice.

- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor 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 Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor 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 Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified 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.

- (d) 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 17.4** 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.

- (e) 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 17.4(i)**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of 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.
- (g) 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.

- (h) Rights Cumulative - Subject to the limitations contained in this Agreement, the right of any Indemnified Party to the indemnification provided in this Agreement 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.

- (i) 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 the Indemnitor and an Indemnified Party and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (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 participate in the defence of such Third Party Claim on behalf of the Indemnified Party and all other provisions of this Section shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

17.5 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured claim in accordance with the insurance coverage requirements set forth in **Article 12**, 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 18
LIMITATION OF DAMAGES**

18.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 17** and **Article 18** of this Agreement shall apply to any and all Claims.

18.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall:

- (a) Muskrat or any other member of the Muskrat Group be liable to NLSO or any other member of the NLSO Group or any of their respective Affiliates, or to Labrador

Transco or any other member of the Labrador Transco Group or any of their respective Affiliates;

- (b) the NLSO or any member of the NLSO Group be liable to Muskrat or any member of the Muskrat Group or any of their respective Affiliates, or to Labrador Transco or any other member of the Labrador Transco Group or any of their respective Affiliates; or
- (c) Labrador Transco or any member of the Labrador Transco Group be liable to the NLSO or any other member of the NLSO Group or any of their respective Affiliates, or to Muskrat or any other member of the Muskrat Group or any of their respective Affiliates;

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 Muskrat Group, the NLSO Group or the Labrador Transco Group, or any of their respective Affiliates, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 18.2**. For the purposes of this **Section 18.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

18.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (a) any insurance proceeds received or entitled to be received in relation to the Claim, and (b) 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.

18.4 Net Present Value

Except as provided for in **Section 15.8**, in no other event shall Muskrat be required to pay the net present value of the LTA Payments due to be paid by Muskrat to Labrador Transco pursuant to the terms of this Agreement. To the extent that the LTA Payments at any time funds debt service of Labrador Transco, only such portion of debt service shall be so funded as constitutes interest, fees and the instalment of principal which are due or about to become due as at such time; and for greater certainty there shall be no accelerated principal payable.

ARTICLE 19 CONFIDENTIALITY

19.1 Obligations of Confidentiality

The provisions of **Schedule 6** shall apply to Confidential Information.

19.2 **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 20
ASSIGNMENT AND CHANGE OF CONTROL

20.1 **Muskrat Assignment Rights**

- (a) General - Except to a Qualified Assignee and subject to **Section 20.1(d)**, Muskrat shall not assign its interest or rights under this Agreement, the PPA, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Muskrat Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the Muskrat Rights by Muskrat unless such assignment includes all of the Muskrat Rights and Muskrat obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Muskrat Rights.
- (c) Change of Control - A change of Control of a Muskrat Affiliate Assignee that would result in such Muskrat Affiliate Assignee no longer being an Affiliate of Muskrat will be deemed to be assignment of the Muskrat Rights in contravention of this **Section 20.1**.
- (d) Consent Requirement - An assignment of the Muskrat Rights to a Person other than an Affiliate of Muskrat, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of NLH (in its capacity as a party to the PPA and not in its capacity as the NLSO) and Labrador Transco.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 20.1** will be null and void.

20.2 **Labrador Transco Assignment Rights**

- (a) General - Except to a Qualified Assignee and subject to **Section 20.2(d)**, Labrador Transco shall not assign its interest or rights under this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Labrador Transco Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the Labrador Transco Rights by Labrador Transco unless such assignment includes all of the Labrador Transco Rights and Labrador Transco 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 Labrador Transco Rights.

- (c) Change of Control - A change of Control of a Labrador Transco Affiliate Assignee that would result in such Labrador Transco Affiliate Assignee no longer being an Affiliate of Labrador Transco will be deemed to be assignment of the Labrador Transco Rights in contravention of this **Section 20.2**.
- (d) Consent Requirement - An assignment of the Labrador Transco Rights to a Person other than an Affiliate of Labrador Transco, an Acquiror, or an administrative or security agent of a Financing Party shall require the prior consent of Muskrat and NLH (in its capacity as a party to the PPA and not in its capacity as the NLSO).
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 20.2** will be null and void.

20.3 **NLSO Assignment Rights**

- (a) NLSO - The rights and obligations of the NLSO shall not be assigned, except to any successor entity taking on the role of the NLSO as may be established by an Authorized Authority from time to time. No consent of the NLSO is required for any assignment by Labrador Transco or Muskrat in accordance with this Agreement.
- (b) Non-Permitted Assignment - Any purported assignment in contravention of this **Section 20.3** will be null and void.

ARTICLE 21
REPRESENTATIONS AND WARRANTIES

21.1 **Muskrat Representations and Warranties**

Muskrat represents and warrants to Labrador Transco and the NLSO that, as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of NL 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 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 it for its 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 its 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 a “non-resident” within the meaning assigned by the Income Tax Act.

21.2 Labrador Transco Representations and Warranties

Labrador Transco represents and warrants to Muskrat and the NLSO that, as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of NL 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 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 it for its 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 its 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 a “non-resident” within the meaning assigned by the Income Tax Act.

ARTICLE 22
MISCELLANEOUS PROVISIONS

22.1 **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:

- (a) to the NLSO:

System Operations Department, Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12800
St. John’s, NL
A1B 0C9
Attention:
Fax:
Email:

- (b) to Muskrat:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15000
St. John’s, NL
A1B 0M4
Attention: Corporate Secretary

Fax: (709) 737-1782

(c) with a copy to

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(d) to Labrador Transco:

Labrador Transmission Corporation
500 Columbus Drive
P.O. Box 15100
St. John's, NL
A1B 0M6
Attention: Corporate Secretary
Fax: (709) 737-1782

(e) with a copy to

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted 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 each other Party.

22.2 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.

22.3 **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.

22.4 **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.

22.5 **Announcements**

No announcement with respect to this Agreement shall be made by a 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 any Applicable Law; provided that such Party consults with each of the other Parties before making any such announcement and gives due consideration to the views of each of the other Parties with respect thereto. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

22.6 **Relationship of the Parties**

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

22.7 **Further Assurances**

Each Party 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.

22.8 **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, each Party shall negotiate in good faith and execute 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.

22.9 **Time of the Essence**

Time shall be of the essence.

22.10 **Amendments**

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by each Party, and, during the Supply Period, is consented to in writing by NLH. Until such time as the Initial Financing is Paid in Full, without the written consent of the Collateral Trustee, no amendment may be made to:

- (a) the definitions in **Section 1.1** of (i) “Acquiror”, “Base Block Payments”, “Collateral Trustee”, “Commissioning Date”, “Financing”, “Financing Documents”, “Financing Parties”, “Force Majeure”, “Forgivable Event”, “Funding Vehicle”, “Initial Financing”, “LTA Capital Costs Recovery”, “LTA Payments”, “LTA Redemption Value”, “Paid in Full”, “Qualified Assignee”, “Supply Period”, or (ii) that are used in a definition referred to in **Section 22.10(a)(i)**;
- (b) **Articles 8, 14, 15, 16, 17, 18 or 20**;
- (c) **Sections 22.10 or 22.14**; or
- (d) **Schedule 1**.

22.11 **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 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 such Party or otherwise reduce the obligations of the Party receiving such consent or approval.

22.12 **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.

22.13 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties, including the payment of any amounts due under **Section 8.1, Section 10.2, Section 10.4, Article 11,**

Article 12, Article 13 and Section 15.8. 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.

22.14 **Step-In Agreements**

On the written request of a Financing Party, the Parties agree to execute and deliver such of the step-in agreements relating to the rights and obligations of Labrador Transco or Muskrat pursuant to this Agreement that is (a) in the case of Labrador Transco, in the form attached as **Schedule 7** (the “**Labrador Transco Step-In Agreement**”), and (b) in the case of Muskrat, in the form attached as **Schedule 8** (the “**Muskrat Step-In Agreement**”), as applicable.

22.15 **Successors and Assigns**

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


22.16 **Crown not an Affiliate**


The NL Crown shall be deemed to not be an Affiliate of any Party hereto.

[Remainder of this page intentionally left blank.]


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

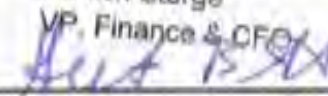
NEWFOUNDLAND AND LABRADOR HYDRO
In its capacity as the NLSO

By: 
Name: Paul Humphreys
Title: VP Systems Operations + Planning


By: 
Name: Robert Henderson
Title: VP, Newfoundland and Labrador Hydro
We have authority to bind the corporation.

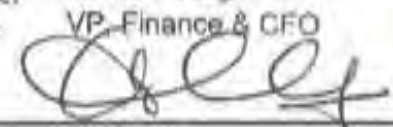
MUSKRAT FALLS CORPORATION

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

By: 
Name: Gilbert Bennett
Title: Vice President
We have authority to bind the corporation.

LABRADOR TRANSMISSION CORPORATION

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

By: 
Name: Robert Hull
Title: GM (Commercial & Financing) & CRO
We have authority to bind the corporation.

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 1

LTA CAPITAL COSTS RECOVERY

SCHEDULE 1
LTA CAPITAL COSTS RECOVERY

Section 1 Definitions

In this **Schedule 1**:

“**Assigned IRR**” means **8.4%**;

“**Base Block Energy**” has the meaning set forth in Schedule 2 to the PPA;

“**Base Year**” means 2013, and “**by**” shall be construed accordingly;

“**BB**” means the Base Block Energy as defined in the PPA;

“**Escalation Factor**” or “**ESC**” means **2%**;

“**IRR**” means the internal rate of return on equity capital earned by Labrador Transco’s equity investor over the period beginning with Sanction and ending at the end of the Supply Period, the IRR being the percentage discount rate which, if applied to the series of equity cash flows over the period beginning with Sanction and ending at the end of the Supply Period including all equity investments and distributions to equity, results in a discounted value of zero;

“**LTA Capital Costs Recovery**” or “**LTACCR**” means recovery over the Supply Period of the following costs, without duplication:

- (a) LTA Development Capital Costs, which shall provide for the repayment of principal under the Financing and the return of equity capital to the equity holder;
- (b) LTA Development Financing Costs;
- (c) Distributions to equity holders sufficient to enable Labrador Transco to achieve its Assigned IRR;

“**LTA Capital Costs Recovery Adjustment**” or “**LTACCRA**” has the meaning set forth in Section 4 of this Schedule 1;

“**LTA Supply Price**” or “**LTASP**” has the meaning set forth in **Section 5** of this **Schedule 1**;

“**m**” means the value attributable to an Operating Month within a given Operating Year;

“**M**” means the number of Operating Months in an Operating Year;

“**y**” means the value attributable to a given Operating Year; and

“**^**” means raised to the power of.

Section 2 Introduction

This **Schedule 1** sets out the methodology for calculation of the LTA Capital Costs Recovery amounts. The result of these calculations is set forth in **Appendix A** to this **Schedule 1** for illustrative purposes. The LTA Capital Costs Recovery calculations are performed from time to time in a manner set forth in **Section 5** of this **Schedule 1**.

Nothing in this Schedule modifies the provisions in this GIA concerning management of the LTA, nor does the actual assignment or delivery of Energy or Capacity over the LTA affect the LTA Capital Costs Recovery.

The LTA Capital Costs Recovery is a dollar value applicable to and recovered in each Operating Year.

The calculation and implementation of the LTA Capital Cost Recovery evolves from the Effective Date through and after Commissioning as follows:

Period	LTA Capital Cost Recovery Change?	Money Change Hands?
Effective Date to LTA Commissioning	Yes, prospectively to reflect changes in amount and timing of LTA Development Capital Costs, LTA Development Financing Costs, the prospective terms and conditions for the Financing after LTA Commissioning, and prospective LTA Commissioning Date	No
Post LTA Commissioning	No	Yes, LTA Capital Cost Recovery

Prior to LTA Commissioning, no payments are made under this GIA. The LTA Capital Costs Recovery is calculated from time to time (as set forth in **Sections 3** through **5** of this **Schedule 1**) on a prospective basis to reflect changes in the amount and timing of LTA Development Capital Costs and LTA Development Financing Costs, the prospective terms and conditions for the Financing after LTA Commissioning, and the projected LTA Commissioning Date.

The LTA Capital Costs Recovery is recalculated on or about the LTA Commissioning Date. The LTA Capital Costs Recovery calculation is finalized based on a materially final determination of LTA Development Capital Costs (net of any LTA Commissioning Period transmission service related revenues under the MPPA), LTA Development Financing Cost, the terms and conditions of the Financing after LTA Commissioning, and the LTA Commissioning Date. Should final LTA Development Costs and LTA Development Financing Costs, including claims, differ from those used in the calculation as at the Commissioning Date, the LTA Capital Costs Recovery will be revised

prospectively for the remainder of the Supply Period. The LTA Capital Costs Recovery does not change thereafter, subject to **Section 4** of this **Schedule 1**.

Section 3 LTA Capital Costs Recovery Calculation Based On Base Block Energy

The LTA Capital Costs Recovery in each Operating Year, in dollars, is calculated prior to the Commissioning Date in the first instance (and subject to **Section 4** of this **Schedule 1**) as:

- The Base Block Energy in each such Operating Year (in GWh); times
- The LTA Supply Price applicable to such Operating Year (in dollars per MWh); times
- 1,000; and
- The amount attributable to a given Operating Month within the Operating Year is this value divided by the number of Operating Months in that Operating Year.

Algebraically:

$LTACCRy = BBy \times LTASPy \times 1,000$; and (prior to the provisions in **Section 4** of this **Schedule 1**)

$LTACCRm = LTACCRy \div My$

Section 4 LTA Capital Recovery Adjustment

If in any month, the LTA Capital Costs Recovery is projected to be insufficient to enable Labrador Transco to meet all of its obligations under applicable Financing Documents, the LTA Capital Costs Recovery shall be adjusted to enable Labrador Transco to meet all its obligations in such month. Any such adjustments will be a LTA Capital Costs Recovery Adjustment, and it will be a positive amount.

For as long as such LTA Capital Costs Recovery Adjustments remain unreimbursed as described below, the balance of such unreimbursed LTA Capital Costs Recovery Adjustments will accrue interest at a rate equal to NLH's prevailing regulated cost of capital.

LTA Capital Costs Recovery Adjustments will be reimbursed to Muskrat, subject to availability of funds and to the provisions of the Financing Documents. Such reimbursements (including reimbursement of accrued interest) will be considered LTA Capital Costs Recovery Adjustments and shall always be a negative amount. If, in any period, Labrador Transco is unable to reimburse Muskrat fully as described above, the obligation to do so will carry over to subsequent periods.

Therefore, including LTA Capital Costs Recovery Adjustments:

$LTACCRm = (BBy \times LTASPy) \times 1,000 \div My + LTACCRAm$

Muskrat shall not rely on this **Section 4** for the purposes of defraying or reallocating any portion of the LTA O&M Costs payable under this Agreement.

Section 5 Derivation of the LTA Supply Price

The LTA Supply Price is an escalating supply price in dollars per MWh applied to Base Block Energy for the sole purpose of calculating the LTA Capital Costs Recovery. The LTASP is subject to escalation at the Escalation Factor each January 1 with the first such escalation being on January 1 of the first Operating Year after the Base Year.

$$LTASPy = LTASPby \times (1 + ESC)^{(y - by)}$$

The LTA Supply Price will be derived using an agreed financial model to be finalized prior to funding under the Financing, and three identical copies of which will be stored on compact discs, each disc or other digital storage medium identified as “LTA Capital Costs Recovery Calculation [INSERT FUNDING DATE], **Schedule 1** to the Generator Interconnection Agreement among Newfoundland and Labrador Systems Operator, Muskrat Falls Corporation and Labrador Transmission Corporation made effective November 29, 2013”, each disc initialled by authorized representatives of the NLSO, Muskrat and Labrador Transco, and consented to by NLH.

This financial model seeks the LTASP as at the Base Year (LTASPby) which enables Labrador Transco to achieve its Assigned IRR. Calculations in the financial model will conform to applicable provisions of the Financing Documents. The inputs to the financial model that may vary after the Effective Date are as follows:

Tab	Line/cell	Description	Source
Control	F11, F21	Supply price optimization inputs	Labrador Transco model operator
Control	M73 - M77	Cost overrun apportionment – part of IRR optimization	
AS	F47	COREA IRR mode	
AS	F31	Reporting date	Labrador Transco model operator
AS	F14, F16, F18, F20, F22, F24	Commissioning date	Labrador Transco, as verified by the Independent Engineer or actual date
AS	F46	Mark-to-Actual toggle	Labrador Transco model operator
AS	F50	Interest on DSRA and LRA	Labrador Transco assumption, based on financial market forward projections
AS	F74, F76, F80, F81, F82, F83, F85, F86	SDN parameters	Labrador Transco, Financing Documents

Tab	Line/cell	Description	Source
ASM	V8-X705	SDN series	Labrador Transco, Financing Documents
AS	F98, F119, F140	Interest rate on BSF	Labrador Transco assumption, based on financial market forward projections
ASM	AD8 – AE705	Capex cash flow series	Labrador Transco, as verified by the Independent Engineer
ASM	A18 – AI705	MPPA revenue before Commissioning	NLSO
ASM	AJ8 – AJ705	Interest earned on Bond Holding Account/Working Capital Reserve	Labrador Transco financial reporting
ASM	AK8 – AS705	Interest earned on deposits – BSF, DSEA, LRA, DSRA, cash balances (actuals)	Labrador Transco forecast assumption
IrA	Lines 11 and 12	Interest rates to be used on short term deposits during construction phase (calculated)	Labrador Transco, from financial market forecasts

The formulae and amounts contained in the financial model have been agreed upon by Labrador Transco, Muskrat and the NLSO, and consented to by NLH, with the exception of the inputs described in the table above which shall be adjusted as necessary from time to time.

GENERATOR INTERCONNECTION AGREEMENT

APPENDIX A

TO

LTA CAPITAL COSTS RECOVERY

LTA CAPITAL COSTS RECOVERY BY OPERATING YEAR

Appendix A

LTA Capital Costs Recovery by Operating Year

Operating Year	Number of Operating Months in Operating Year	LTA Capital Costs Recovery (\$ millions)
1	7	\$ 17.9 million
2	12	\$ 32.3 million
3	12	\$ 32.1 million
4	12	\$ 34.0 million
5	12	\$ 36.5 million
6	12	\$ 39.1 million
7	12	\$ 41.3 million
8	12	\$ 43.5 million
9	12	\$ 45.8 million
10	12	\$ 48.1 million
11	12	\$ 52.1 million
12	12	\$ 56.3 million
13	12	\$ 59.0 million
14	12	\$ 61.7 million
15	12	\$ 64.5 million
16	12	\$ 67.4 million
17	12	\$ 70.4 million
18	12	\$ 73.5 million
19	12	\$ 76.7 million
20	12	\$ 80.0 million

Operating Year	Number of Operating Months in Operating Year	LTA Capital Costs Recovery (\$ millions)
21	12	\$ 83.4 million
22	12	\$ 86.8 million
23	12	\$ 90.4 million
24	12	\$ 94.7 million
25	12	\$ 98.2 million
26	12	\$ 101.7 million
27	12	\$ 105.2 million
28	12	\$ 108.8 million
29	12	\$ 112.2 million
30	12	\$ 114.4 million
31	12	\$ 116.7 million
32	12	\$ 119.1 million
33	12	\$ 121.4 million
34	12	\$ 123.9 million
35	12	\$ 126.3 million
36	12	\$ 136.2 million
37	12	\$ 140.3 million
38	12	\$ 144.4 million
39	12	\$ 148.6 million
40	12	\$ 153.0 million
41	12	\$ 157.4 million

Operating Year	Number of Operating Months in Operating Year	LTA Capital Costs Recovery (\$ millions)
42	12	\$ 162.0 million
43	12	\$ 166.7 million
44	12	\$ 171.5 million
45	12	\$ 176.4 million
46	12	\$ 181.5 million
47	12	\$ 186.7 million
48	12	\$ 192.1 million
49	12	\$ 197.5 million
50	12	\$ 203.2 million
51	5	\$ 86.8 million

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 2

LTA PROJECT DESCRIPTION

SCHEDULE 2 LTA PROJECT DESCRIPTION

The following are the components of the Labrador Transmission Assets

Section 1 Muskrat Falls Switchyard

- Switchyard is situated on the Southside of the river on a level, fenced site
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear
- Electrical layout of the switchyard is to be in accordance with the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram” attached as **Appendix A** to this **Schedule 2**. The 315kV portion is a breaker and a half arrangement consisting of sixteen 315 kV breakers and associated disconnects. The 138kV portion connects the switchyard to the existing NLH system via the 138kV transmission line L1301. There are two 138 kV breakers and associated disconnects
- Substation to interconnect the plant to the 315 kV HVac transmission lines to Churchill Falls (CF) and the HVdc Converter Station
- Substation includes two 125 MVA transformers, 315-138 KV with tertiary windings rated at 25 kV to supply station services for switchyard and converter station

Section 2 Muskrat Falls Switchyard to HVdc Converter Station

- Four 315 kV HVac feeders connecting the switchyard to the *converter station* as per the attached single line diagram. Two feeders connecting to the converter transformers and two feeders connecting to the filters.

Section 3 HVac Overland Transmission - Muskrat Falls to CF

- Two 315 kV HVac overhead transmission lines to connect the Muskrat Falls switchyard to the Churchill Falls switchyard extension
- Provision for Gull Island interconnection to be included through selected placement of dead end towers
- Transmission lines are to be carried on galvanized lattice steel towers, with self-supported angles and dead ends, and guyed suspension towers
- Transmission line power capacity is to be 900 MW for each transmission line, allowing for all load to be carried on a single circuit
- Transmission line corridor as per Key Plan
- 50 year *Reliability Level Return Period* of loads, with respect to Nalcor Energy operating experience and LCP specific modeling and test programs
- One transmission line shall have one OHGW and one OPGW and the second line shall have two OHGW
- *Counterpoise* installed from station-to-station

Section 4 CF Switchyard Extension

- Extension of the existing 735 kV main bus with two bus coupling circuit breakers and associated disconnects
- The 735kV portion is a breaker and one third arrangement consisting of three 735 kV breakers and associated disconnects with space for expansion
- The 315 kV portion is a breaker and one third arrangement consisting of six 315 kV breakers and associated disconnects with space for expansion
- Two 833 MVA, 735-315 kV auto-transformers, with tertiary windings rated at 13.8 kV to supply the substation service loads
- Accommodation of two 315 kV HVac transmission lines from MF
- Provision for space for future 735 kV and 315 kV transmission line feeders in accordance with the single line diagram
- CF switchyard extension is to be located approximately 500 m east of the existing CF switchyard on a level, fenced site and includes developed space for future 735 kV and 315 kV line feeders
- Two 735 kV transmission lines, each approximately 500 m in length, to join the existing CF switchyard to the CF switchyard extension
- Construction and operation not to adversely impact the existing CF operation
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear

Section 5 Operations Telecommunication System - Labrador Transmission

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers
- OTN Layer shall be the telecommunications backbone and utilize the OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN layer equipment nodes shall be designed based upon the least total cost of ownership alternative
- Convergence layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the Access Layer subsystems for transmission on the OTN
- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance
- The Labrador Transmission Link Telecommunication Assets specifically include the following:
 - One OPGW mounted on one 315 kV HVac TL connecting
 - MF 315 kV Switchyard to CF 735-315 kV Switchyard
 - TLH ADSS fibre optics connecting
 - Labrador West to CF to MF to HVGB
 - OTN Layer optical-electronics associated with the above referenced fibre optic interconnections

- Convergence and Access Layer telecommunication systems associated with the above referenced OTN Layer optical electronics, except these telecommunication layers at MF
- NLH ECC and BCC SCADA system upgrades and upgrades to CF SCADA system as required

Section 6 Interconnection Points

1.1 Churchill Delivery Points

- These are the points at which the 735 kV lines cross the boundary between property to be acquired by Labrador Transco and property for CFLCo
- The physical points are identified as disconnects in the CF Switchyard Extension that connect the LTA to the CFLCo Plant. They are shown as 13B135 and 14B246 on the single line titled “Churchill Falls 315/735KV Extension for Muskrat Falls Single Line Diagram”, attached as **Appendix B** to this **Schedule 2**

1.2 Muskrat Delivery Points

- The points of interconnection between the MF Plant and the LTA
- The physical points are identified as disconnects in the Muskrat Falls Switchyard that connect the LTA to the Muskrat Falls Generating Station. They are shown as B12T1, B22T2, B11T3 and B21T4 on the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram”, attached as **Appendix A** to this **Schedule 2**.
- These disconnects are connected to the high side transformer disconnects (T1 - T4) in the Muskrat Falls Generating Station

1.3 LIL-LTA Interconnection Points

- The points of interconnection between the LIL and the LTA
- The physical points are identified as disconnects in the Muskrat Falls Switchyard that connect the LTA to the Muskrat Falls Convertor Station. They are shown as B24F2, B23P2, B32P1 and B31F1 on the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram”, attached as **Appendix A** to this **Schedule 2**.
- These disconnects are connected to the Poles (Pole P1 and P2) and Filters (Filters F1 and F2) in the Muskrat Falls Convertor Station

1.4 LTA - NLH System Interconnection Points

- The points of interconnection between the LTA and the existing NLH System
- The physical point is identified as the disconnect in the Muskrat Falls Switchyard that connects the LTA to the existing NLH System. This is via L1301 to Happy Valley Goose Bay. The point is shown as B41L1301-1 on the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram”, attached as **Appendix A** to this **Schedule 2**.

1.5 **Station Service Interconnection**

- The Station Service supply is shown on the single line diagram titled “Muskrat Falls AC Switchyard 315 KV Single Line Diagram”, attached as **Appendix A** to this **Schedule 2**. It is being fed from transformers T5 and T6.
- Station Service for the Muskrat Falls Switchyard is labelled as AC Substation
- Station service for the LIL (Muskrat Falls Convertor Station) is labelled as Convertor Station

GENERATOR INTERCONNECTION AGREEMENT

APPENDIX A

TO

LTA PROJECT DESCRIPTION

MUSKRAT FALLS AC SWITCHYARD 315 KV SINGLE LINE DIAGRAM

Appendix A

Muskrat Plant AC Switchyard 315 kV Single Line Diagram

GENERATOR INTERCONNECTION AGREEMENT

APPENDIX B

TO

LTA PROJECT DESCRIPTION

CHURCHILL FALLS 315/735KV EXTENSION FOR MUSKRAT FALLS SINGLE LINE DIAGRAM

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 3

FORM OF ASSIGNMENT

**SCHEDULE 3
FORM OF ASSIGNMENT**

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ASSIGNMENT OF GENERATOR INTERCONNECTION AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the ___ day of _____, 20___.

AMONG:

NEWFOUNDLAND AND LABRADOR HYDRO, a body corporate existing pursuant to the *Hydro Corporation Act, 2007*, being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007* ("**NLH**") acting in its capacity as the **NLSO**

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor ("**Muskrat**")

- and -

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor ("**Labrador Transco**")

- and -

<@>, a [type of entity and jurisdiction or statute of incorporation or formation], [*insert basis on which assignee is permitted*] (the "**Assignee**")

WHEREAS:

- A. NLH (in its capacity as the NLSO), Labrador Transco and Muskrat entered into the Generator Interconnection Agreement on November 29, 2013 (the "**GIA**")

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;

“Assignee” means [], a Qualified Assignee of the Assignor;

“Assigned Rights” means the GIA, and the **[Muskrat Rights] [Labrador Transco Rights]**;

“Assignor” means **[Muskrat or an Affiliate of Muskrat, or Labrador Transco or an Affiliate of Labrador Transco, 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;

“Bulk Electric System” has the meaning set forth in the GIA;

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

“Consenting Parties” means **[NLH, Muskrat and Labrador Transco]**;

“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**” means []; [**Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmission assets and contracts transferred to it, the Effective Date is to be the date when all of those transfers are effective.**]

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

“**GIA**” has the meaning set forth in the recitals;

“**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;

“Labrador Transco” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Labrador Transco Rights” has the meaning set forth in the GIA;

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

“Muskrat” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Muskrat Rights” has the meaning set forth in the GIA;

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“NLSO” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the systems operation department of NLH responsible for the safe and Reliable operation of the Bulk Electric System, or a functionally separate division of NLH performing this function, and includes its 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**;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“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;

“Qualified Assignee” has the meaning set forth in the GIA;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“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; 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 a Qualified Assignee

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 Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights as of the Effective Date and covenants and agrees with the Assignor and the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Rights. 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 Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of the GIA

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the GIA. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor is in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights subject to the terms and conditions herein, and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Sections 20.1(d) or 20.2(b) of the GIA, as applicable, do not require consent to assignment.

2.5 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 2.5(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 2.7**.

2.6 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.6(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.

2.7 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.

2.8 Payment and Offset

- (a) Subject to **Section 2.8(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.

2.9 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 ●.

**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 Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary 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**][**Qualified Assignee**] of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

**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 4 to the GIA (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:

- (a) To Assignor:
 [•]
- (b) To Assignee:
 [•]
- (c) To Consenting Parties:
 [•]

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 GIA.

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.

[The 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].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

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

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

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SCHEDULE 4
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:

“Agreement” means the agreement to which this Schedule is attached;

“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)(i)**;

“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 Parties**” has the meaning set forth in **Section 5.1(a)(i)**;

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

“**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 by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

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

“**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 Agreement.

2.3 Interim Measures

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

2.4 Mediator or Arbitrator as Witness

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

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by the Party requesting a review under this **Section 3** by Notice to the other Parties (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 no 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 any 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 forth 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) a Party gives Notice to the other Parties 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 no 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) a Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Parties (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, any Party may elect, by giving notice thereof to the other Parties, 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 **Sections 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 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 any other agreement to which they are all parties, 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 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

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

Section 6 **Expert Determination Procedure**

6.1 **Referral for Expert Determination**

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 the Agreement, 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 **Sections 6.3(a)** or **(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 forth 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 Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

GENERATOR INTERCONNECTION AGREEMENT

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.

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 5

GENERAL SECURITY AGREEMENT

**SCHEDULE 5
GENERAL SECURITY AGREEMENT**

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GENERAL SECURITY AGREEMENT

THIS GENERAL SECURITY AGREEMENT is made effective the 29th day of November, 2013 (the “Effective Date”).

BETWEEN:

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor (“**Labrador Transco**”)

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor (“**Muskrat**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the Statutes of Newfoundland and Labrador, 2007, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

WHEREAS:

- A. Labrador Transco, Muskrat and NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the systems operation department of NLH, responsible for the safe and Reliable operation of the Bulk Electric System, or a functionally separate division of NLH performing this function (the “**NLSO**”) are parties to the GIA; and
- B. Pursuant to the GIA, Labrador Transco has agreed to grant to Muskrat, with a right to assign to NLH pursuant to the PPA, a general security interest in the LTA within the meaning of the *Personal Property Security Act* (Newfoundland and Labrador), which shall include a general security interest in the GIA;
- C. Muskrat and NLH have entered into the PPA, pursuant to which NLH has agreed to pay the LTA Redemption Value in the circumstances described in Section 15.8 of the GIA and assume a security interest under this Agreement; and
- D. the security interest granted by Labrador Transco shall in all respects be subject and subordinate to the security interests granted by the Financing Documents.

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

ARTICLE 1
INTERPRETATION

1.1 **Definitions**

In this Agreement, including the recitals, capitalized terms which are defined in the GIA and are not otherwise defined herein have the meanings ascribed thereto in the GIA when used in this Agreement, and the following terms shall have the meanings set forth below:

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

“Collateral” means all of Labrador Transco’s present and after acquired personal property, including the rights and interests of Labrador Transco in the GIA and the LTA, including all equipment, inventory, accounts, intangibles, documents of title, chattel paper, instruments, money, securities, documents, undertaking and proceeds of any of the foregoing;

“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 6.1**;

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

“GIA” means the agreement between Labrador Transco, Muskrat and NLH, in its capacity as the NLSO, by which the LTA is constructed and operated by Labrador Transco as a system upgrade, so as to permit the interconnection of the MF Plant and the NL Transmission System in exchange for payment by Muskrat of the LTA Payments, and to which this Agreement is attached as a Schedule;

“Labrador Transco Rights” has the meaning set forth in **Section 5.3(a)**;

“PPSA” means the *Personal Property Security Act* (Newfoundland and Labrador);

“PPSA” means the *Personal Property Security Act* (Newfoundland and Labrador);

“Muskrat Rights” has the meaning set forth in **Section 5.2(a)**;

“Parties” means Labrador Transco, Muskrat and NLH, and **“Party”** means one of them;

“Secured Obligations” means the obligations of Labrador Transco as set forth in the GIA;

“Term” has the meaning set forth in **Section 3.1**.

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) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Appendices) are in lawful money of Canada.
- (e) 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.
- (f) 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.
- (g) 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.

- (h) 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.
- (i) 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 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 6**, 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 SECURITY AGREEMENT AND COVENANTS OF LABRADOR TRANSCO

2.1 Security Agreement

- (a) Grant of Security Rights - As general and continuing collateral security for Losses which may be incurred as a result of a Labrador Transco Default in the obligation to perform the Secured Obligations, Labrador Transco hereby transfers, assigns, mortgages and charges the Collateral to and in favour of Muskrat and NLH, and grants to each such Party, a continuing security interest in the Collateral.
- (b) Attachment; No Obligation to Advance - Labrador Transco confirms that value has been given by Muskrat and NLH, that Muskrat and NLH have rights in the Collateral (other than after-acquired property) existing at the date of this Agreement, as the case may be, and that Labrador Transco, Muskrat and NLH have not agreed to postpone the time for attachment of the security interest created by this Agreement to any of the Collateral. The security interest in respect of the Collateral created by this Agreement will have effect and be deemed to be effective whether or not the Secured Obligations or any part thereof are owing or in existence before or after or upon the date of this Agreement.

- (c) Subordination - The Parties acknowledge and agree that the transfer, assignment, mortgage and charge of the Collateral, and the continuing general security interest granted in the Collateral, is subject to and subordinate in all respects to the transfers, assignments, mortgages, charges and security interests created pursuant to the Financing Documents, and Muskrat and NLH agree to execute and deliver an Acknowledgement of Subordination in the form attached as **Appendix A**.

2.2 Covenants of Labrador Transco

Labrador Transco covenants and agrees with Muskrat and NLH as follows:

- (a) Further Documentation - Labrador Transco will from time to time, at its expense, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as Muskrat and NLH may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any notices, financing statements or financing change statements under any applicable legislation with respect to the transfer, assignment, mortgage, charge and security interest created by this Agreement). Labrador Transco acknowledges that this Agreement has been prepared based on the existing laws in NL and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation to preserve and comply with the intent of this Agreement. Accordingly, Labrador Transco agrees that Muskrat and NLH will have the right to require that this Agreement be amended, supplemented or replaced, and that Labrador Transco will immediately on request by Muskrat and NLH authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions as a result of any changes in such laws, or (iii) if Labrador Transco merges, amalgamates or consolidates with any other Person or enters into any corporate reorganization, in each case in order to confer on Muskrat and NLH transfers, assignments, mortgages, charges and security interests similar to, and having the same effect as, the transfer, assignment, mortgage, charge and security interest granted by Labrador Transco under this Agreement.
- (b) Payment of Expenses; Indemnification - Upon the occurrence of a Labrador Transco Default, Labrador Transco will pay on demand, and will indemnify and save Muskrat and NLH harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and his or her own client basis and any Taxes payable to any Authorized Authority with respect to any such liabilities, costs and expenses) (i) incurred by Muskrat or NLH in the administration or enforcement of this Agreement, or (ii) incurred by Muskrat or NLH in performing or observing any of the other covenants of Labrador Transco under this Agreement.

ARTICLE 3
TERM AND TERMINATION

3.1 **Term**

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and terminate in accordance with **Section 3.2**.

3.2 **Termination**

This Agreement shall terminate upon termination of the GIA, provided that the security interest, rights and obligations of NLH shall terminate when the obligation to pay the LTA Payments terminates.

3.3 **Effect of Termination**

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

- (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Section 6.1**; and
- (ii) no Party shall have any obligation to the other Parties in relation to this Agreement or the termination thereof, except as set out in this **Section 3.3**.

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

- (i) the final settlement of all accounts between them;
- (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 8.3**.

**ARTICLE 4
DEFAULT AND REMEDIES**

4.1 Labrador Transco Event of Default

A default by Labrador Transco under this Agreement shall occur whenever there is a Labrador Transco Default under the GIA.

4.2 Remedies upon Labrador Transco Default

Upon the occurrence of a Labrador Transco Default and at any time thereafter, Muskrat and NLH shall be entitled to exercise all or any of their rights, remedies or recourse available to them under (a) the GIA, and (b) as a secured party under and as defined by the PPSA.

4.3 NLH's Appointment as Attorney-in-Fact

Labrador Transco constitutes and appoints NLH and any officer or agent of the NLH, with full power of substitution, as Labrador Transco's true and lawful attorney-in-fact with full power and authority in the place of Labrador Transco and in the name of Labrador Transco or in its own name, from time to time in NLH's discretion after a Labrador Transco Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the transfer, assignment, mortgage, charge and security interest created by this Agreement is released. Nothing in this **Section 4.3** affects the right of NLH as secured party, or any other Person on NLH's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as NLH or such other Person considers appropriate.

**ARTICLE 5
ASSIGNMENT AND CHANGE OF CONTROL**

5.1 NLH Assignment Rights

- (a) General - NLH shall not assign this Agreement, its interests or rights hereunder, any Claim or any agreement relating to the foregoing.
- (b) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.1** will be null and void.

5.2 Musktrat Assignment Rights

- (a) Muskrat shall be entitled to assign all of its rights and interests in this Agreement or any Claim (collectively, the "**Musktrat Rights**") to any Person which has become the assignee of Muskrat's rights and interests in the GIA pursuant to the assignment provisions of the GIA.

- (b) Agreement to be Bound - No assignment may be made of the Muskrat Rights by Muskrat unless such assignment includes all the Muskrat Rights and Muskrat obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Muskrat Rights.
- (c) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.2** will be null and void.

5.3 Labrador Transco Assignment Rights

- (a) Labrador Transco shall be entitled to assign all of its rights and interests in this Agreement or any Claim (collectively, the “**Labrador Transco Rights**”) to any Person which has become the assignee of Labrador Transco’s rights and interests in the GIA pursuant to the assignment provisions of the GIA.
- (b) Agreement to be Bound - No assignment may be made of the Labrador Transco Rights by Labrador Transco unless such assignment includes all the Labrador Transco Rights and Labrador Transco obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Labrador Transco Rights.
- (c) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.3** will be null and void.

**ARTICLE 6
DISPUTE RESOLUTION**

6.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 4 to the GIA (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 6**, without prejudice to any Party’s rights pursuant to this Agreement.

**ARTICLE 7
REPRESENTATIONS AND WARRANTIES**

7.1 Labrador Transco Representations and Warranties

Labrador Transco represents and warrants to Muskrat and NLH, 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 and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its knowledge, threatened against it;
- (e) there are no legal proceedings pending or, to its knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;
- (g) it 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;
- (h) Except for such as are associated with the Financing Documents, Labrador Transco holds the Collateral free and clear of any mortgage, charge, hypothecation, lien or other adverse claim or encumbrance of any nature.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 **Notices**

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

- (a) to Labrador Transco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15100, Station A
St. John's, NL A1B 0M6
Attention: Corporate Secretary
Fax: (709) 737-1782

- (b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

- (c) to Muskrat:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL A1B 0M4
Attention: Corporate Secretary
Fax: (709) 737-1782

- (d) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

- (e) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

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

8.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein.

8.3 Counterparts

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

8.4 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.

8.5 Announcements

No announcement with respect to this Agreement shall be made by a 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. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

8.6 **Relationship of the Parties**

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

8.7 **Further Assurances**

Each Party 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.

8.8 **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, each Party 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.

8.9 **Time of the Essence**

Time shall be of the essence.

8.10 **Amendments**

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

8.11 **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 such Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

8.12 **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.

8.13 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties, arising out of this Agreement. All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, representations, warranties and releases, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

8.14 **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 (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) 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.

8.15 **Successors and Assigns**

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

[Remainder of this page intentionally left blank.]

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

LABRADOR TRANSMISSION CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

MUSKRAT FALLS CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

GENERATOR INTERCONNECTION AGREEMENT

APPENDIX A

TO THE

GENERAL SECURITY AGREEMENT

ACKNOWLEDGEMENT OF SUBORDINATION

ACKNOWLEDGEMENT OF SUBORDINATION

The undersigned hereby acknowledges, declares and agrees that the securities interest granted to it in the General Security Agreement dated _____ (the “**Security Interest**”) among Labrador Transmission Corporation, Muskrat Falls Corporation and Newfoundland and Labrador Hydro, and all of the rights, remedies and/or recourses of the undersigned in connection therewith are hereby and shall hereafter be completely subordinated to and rank after any and all Liens now or hereafter held by the Collateral Agent, the LIL Security Trustee or any other GAA Finance Party (as each of those terms is defined in the Financing Documents, collectively, the “**Senior Liens**”), for its own benefit and the benefit of the GAA Finance Parties, notwithstanding any ranking that might otherwise be established by Applicable Law resulting from the nature of the Liens created under the Security Interest or the Senior Liens or the date or time of execution, issue, delivery, registration, filing, notification, publication or perfection of any deed, document, application for registration, notice or financing statement, or otherwise howsoever. The undersigned covenants and agrees not to exercise any of its rights, remedies and/or recourses under the Security Interest without the prior written consent of the Collateral Agent. The undersigned agrees to take such actions and execute and deliver such documents and information as may be reasonably requested by the Collateral Agent from time to time in order to give effect to the subordination contemplated herein, including, without limitation, registration of an amendment to any Personal Property Security Act (Newfoundland and Labrador) registration made in connection with the Security Interest to note the subordination in favour of the Senior Lenders.

MUSKRAT FALLS CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 6

CONFIDENTIAL INFORMATION

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SCHEDULE 6
CONFIDENTIAL INFORMATION SCHEDULE

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

“Agreement” means the agreement to which this Schedule is attached;

“ATIPPA” means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

“Authorized Purpose” means a purpose associated with the rights and obligations set forth in the Agreement;

“ECA” means the *Energy Corporation Act* (Newfoundland and Labrador);

“Lender Recipient” has the meaning set forth in **Section 2.3**;

“Representatives” means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

“Schedule” means this **Schedule 6 - Confidential Information**;

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

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

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

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

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the Term, provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

- (a) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this Schedule or other obligation of confidentiality;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;

- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

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

Section 3 Acknowledgements

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

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

Section 4 Disclosures Required by Law

4.1 The Parties and each of their Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. Each of the Parties acknowledge that such Party and each of its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 The Parties hereby acknowledge and agree that the Confidential Information disclosed by another Party is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to the other Parties, as applicable. It is further acknowledged and agreed that each Party has represented to the other Parties that the Confidential Information disclosed is treated consistently in a confidential manner by them and is customarily not provided to their competitors. Therefore, the Parties shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure and be entitled to be represented and make arguments in support of non-disclosure.

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

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;
- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including **Section 4.3**, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Parties or their Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding among the Parties or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

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

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 7

LABRADOR TRANSCO STEP-IN AGREEMENT

**SCHEDULE 7
LABRADOR TRANSCO STEP-IN AGREEMENT**

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STEP-IN AGREEMENT

THIS STEP-IN AGREEMENT is made effective the 29th day of November, 2013 (the “**Effective Date**”).

AMONG:

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**Labrador Transco**”)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as collateral trustee under the deed of trust and mortgage dated November 29, 2013, executed in its favour by Labrador Transco (the said deed of trust and mortgage, as changed and in effect from time to time, the “**Collateral Trust Deed**”), for and on behalf of the Senior Secured Bondholders (as defined therein) (the “**Security Trustee**”)

- and -

TORONTO DOMINION BANK, in its capacity as collateral agent under the collateral agency agreement dated November 29, 2013, executed in its favour by, *inter alia*, Labrador Transco (as changed and in effect from time to time, the “**Collateral Agency Agreement**”), for and on behalf of the GAA Finance Parties (as defined therein) (the “**Collateral Agent**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) and a wholly-owned subsidiary of Nalcor (“**NLH**”)

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**MF**”)

- and -

NEWFOUNDLAND AND LABRADOR SYSTEM OPERATOR, the systems operation department of NLH, (the “**NLSO**”)

(each one of NLH, the NLSO and MF shall be referred to as a “**Contracting Party**” and collectively as the “**Contracting Parties**”)

WHEREAS:

- A. Labrador Transco has entered into the Generator Interconnection Agreement made as of November 29, 2013 with MF and the NLSO (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of Labrador Transco therein (as the context requires and/or so admits) collectively, the “**GIA**”), pursuant to which NLH may be assigned a right to assume Operational Control of the LTA;
- B. Pursuant to the Collateral Trust Deed and various other security documents, the Security Trustee has been or will be granted Liens in all of the assets and rights of Labrador Transco, including the GIA (collectively, the “**Security Interests**”).

NOW THEREFORE in consideration of the premises and the agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. Definitions

The words and expressions (capitalized or not), wherever used in this Agreement s, or in any agreement supplemental or ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings ascribed thereto.

(a) General Definitions - Unless the context otherwise requires, in this Agreement:

“**Account Holder**” has the meaning set forth in the Collateral Trust Deed;

“**Acquiror**” has the meaning set forth in **Section 5(a)(v)**;

“**Agent Party**” has the meaning set forth in **Section 5(a)(iv)**;

“**Base Block Payments**” has the meaning set forth in the PPA;

“**Business Day**” means any day excluding Saturday, Sunday or any other day which in the City of St. John’s, Newfoundland and Labrador, is a legal holiday or a day on which banks are authorized by Law or by local proclamation to close;

“**Canada**” means Her Majesty the Queen in Right of Canada;

“**Collateral Agency Agreement**” has the meaning set forth at the commencement hereof;

“**Collateral Agent**” has the meaning set forth at the commencement hereof;

“**Collateral Trust Deed**” has the meaning set forth at the commencement hereof;

“**Consent**” has the meaning set forth in **Section 5(b)**;

“**Contracting Party**” and “**Contracting Parties**” has the meaning set forth at the commencement hereof;

“**Default Notice**” has the meaning set forth in **Section 5(a)(iv)**;

“**Enforcing Party**” has the meaning set forth in **Section 5(b)**;

“**Financing Documents**” has the meaning set forth in the GIA;

“**GAA Finance Parties**” has the meaning set forth in the Financing Documents;

“**GIA**” has the meaning set forth in **Recital A**;

“**LTA**” has the meaning set forth in the GIA;

“**LTA Payments**” has the meaning set forth in the GIA;

“**Law**” means all applicable provisions of laws, ordinances, codes, rules, regulations, orders, orders in council, directives, decrees, administrative orders, guidelines, policies of any governmental entity, as well as the applicable provisions of any treaty and any order and decree of any tribunal and arbitrator after the expiration of any appeal period;

“**Labrador Transco**” has the meaning set forth at the commencement hereof;

“**Labrador Transco Project Funding Account**” means the account of Labrador Transco maintained with the Account Holder and bearing number <*>;

“**Lien**” means (i) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation, (ii) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), including by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms, (iii) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and (iv) any agreement to grant any of the foregoing rights or interests;

“**MF**” has the meaning set forth at the commencement hereof;

“**NLH**” has the meaning set forth at the commencement hereof;

“**Operational Control**” means performance of, or the authority to perform, direct or authorize performance of, security monitoring, adjustment of generation and transmission

resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for Reliability, planning assessments, coordination with Control Area operators, voltage reductions, load shedding and control of physical access to the generation and transmission resources;

“**PPA**” means the Power Purchase Agreement as set forth in the GIA;

“**Paid in Full**” means, in relation to any indebtedness that is or may become owing to any person, the permanent, indefeasible and irrevocable payment in cash to such person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to insolvency events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such person to lend or otherwise extend credit or pay any indebtedness; and “**Pay in Full**” shall have a correlative meaning;

“**Qualified Assignee**” has the meaning set forth in the GIA;

“**Remedies Consultation Period**” has the meaning set forth in the Financing Documents;

“**Secured Obligations**” has the meaning set forth in the Collateral Trust Deed;

“**Security Interests**” has the meaning set forth in **Recital B**;

“**Security Trustee**” has the meaning set forth at the commencement hereof;

“**Senior Secured Bondholders**” has the meaning set forth in the Collateral Trust Deed; and

“**Subordinated GSA**” means the General Security Agreement entered into between Labrador Transco, Muskrat and NLH pursuant to Section 15.6(d) of the GIA and substantially in the form attached as Schedule 5 to the GIA, which has been subordinated to the Security Interests by a Subordination Acknowledge in the form of Appendix A thereto.

(b) Extended Meanings - To the extent the context so admits, in this Agreement the following words and expressions shall be given the extended meanings set forth opposite them:

an “**agreement**” - any agreement, oral or written, simple contract or specialty, bond, bill of exchange, indenture, instrument or undertaking;

“**asset**” - any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset;

a “**breach**” - any breach, default, event of default, or any equivalent or similar event however described under any agreement;

“cancel” - cancel, surrender, repudiate, disclaim, terminate or suspend;

“change” - change, modify, alter, amend, supplement, restate, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive;

“claim” - claim, claim over, cross-claim, counter-claim, defence, demand, liability, proceeding, judgment or order or award of any court, other governmental authority, arbitrator or other alternative dispute resolution authority;

a **“document”** - a written agreement, consent, waiver, certificate, notice or other written document or instrument;

a **“government”** - (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it;

“governmental authority” - any court, administrative tribunal, regulatory authority, government, union of nations or any agency or other authority of a government or union of nations;

“include” - include without limitation, and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters;

“losses and expenses” - losses, costs, expenses, damages, penalties and judgments and awards of any court or other governmental authority, arbitrator, mediator or other alternative dispute resolution authority, including any applicable awarded costs, and legal fees and disbursements on a solicitor and client basis;

“obligations” - indebtedness, obligations, promises, covenants, responsibilities, acts, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“person”** - an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a corporation organized under the laws of any jurisdiction, a government or agency of a government or any other legal or commercial entity;

“proceeding” - any legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding;

“receiver” - a privately appointed or court appointed receiver or receiver and manager, and, except in the definition of “Agent Party”, an interim receiver, liquidator, trustee in bankruptcy, administrator, administrative receiver and any other like or similar official;

a **“registration”** - any notice to or filing, publication, recording or registration with any governmental authority having jurisdiction with respect to any specified person, transaction or event, or any of such person's assets;

“rights” - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities, recourses and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“successor”** of a person (the **“relevant party”**) - (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates and (ii) any person to whom all or substantially all of the assets of the relevant party are transferred;

“written” and **“in writing”** - an original writing, a pdf or facsimile copy of a writing or an email.

2. Representations and Warranties

Each Contracting Party, for itself only, hereby represents, warrants, acknowledges and confirms to the Security Trustee, with the knowledge that the Security Trustee and the Senior Secured Bondholders are relying on such representations, warranties, acknowledgments and confirmations for the purpose of entering into the Collateral Trust Deed and the Financing Documents, that:

- (a) each Contracting Party is a corporation duly and validly incorporated and existing under the laws of Newfoundland and Labrador and each has the legal capacity and right to own its assets and to carry on its business in each jurisdiction in which its assets are located or it carries on business;
- (b) each Contracting Party has the legal capacity and right to enter into this Agreement and the GIA and do all acts and things and execute and deliver all documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms and conditions hereof and thereof;
- (c) each Contracting Party has taken all necessary action to authorize the execution and delivery of this Agreement and the GIA, the creation and performance of its obligations hereunder and thereunder as well as the consummation of the transactions contemplated hereunder and thereunder;
- (d) each Contracting Party has duly executed and delivered this Agreement and the GIA;
- (e) none of the authorization, execution, delivery or performance of this Agreement or the GIA by each Contracting Party, nor the consummation of any of the transactions contemplated hereby or thereby;

- (i) requires any authorization to be obtained or registration to be made (except such as have already been obtained or made and are now in full force and effect and those not yet required);
 - (ii) conflicts with, contravenes or gives rise to any breach under (A) any of the articles (being the Hydro Corporation Act, 2007 (Newfoundland and Labrador), the Energy Corporations Act (Newfoundland and Labrador) or by-laws of either Contracting Party, (B) the provisions of any document or obligation to which either Contracting Party is a party or by which such Contracting Party or any of its assets are or may become bound or (iii) any Law;
 - (iii) has resulted or will result in the creation or imposition of any Lien upon any of the assets of either Contracting Party;
- (f) each of this Agreement and the GIA constitutes a valid and legally binding obligation of each Contracting Party enforceable against it in accordance with its terms, subject only to Laws relating to bankruptcy, insolvency, winding-up, dissolution, administration, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion;
- (g) the GIA is in full force and effect and has not been changed and there is no dispute (to the best of its knowledge) thereunder now existing, and after giving effect to the granting of the Security Interests by Labrador Transco to the Security Trustee in the GIA, and after giving effect to this Agreement by each Contracting Party, there exists no event or condition which would constitute a breach, or which, with the giving of notice or lapse of time or both, would have constituted a breach under the GIA;
- (h) each:
- (i) Contracting Party; and
 - (ii) to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, Labrador Transco,
- is in full compliance in all material respects with and has performed its obligations under the GIA which are required to be complied with and/or performed to date;
- (i) each Contracting Party has no outstanding claims of a material nature against Labrador Transco in respect of the GIA;
- (j) there are no existing circumstances which could give rise to a material breach by either Contracting Party or, to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, Labrador Transco, under the GIA; and

- (k) neither Contracting Party has delivered to or received from Labrador Transco, any notice purporting to cancel the GIA.

3. Benefits hereunder independent to those of Labrador Transco

Each Contracting Party hereby acknowledges and agrees that the rights of each Agent Party under this Agreement shall be independent to those of Labrador Transco under the GIA and may be enforced by such Agent Party independently from Labrador Transco.

4. Agent Party not bound to exercise rights

Each Contracting Party hereby acknowledges and agrees that, save as otherwise expressly agreed to in writing, nothing herein contained shall be construed or interpreted as obliging any Agent Party, nor shall any Agent Party be liable for the failure, to exercise any of the rights afforded to it hereunder or under the Collateral Trust Deed. Each Contracting Party hereby further acknowledges and agrees that no Agent Party shall be liable for any loss and expense incurred or suffered by such Contracting Party as a result of any delay by, or any failure of, such Agent Party to exercise any of, the rights afforded to such Agent Party hereunder or under the Collateral Trust Deed.

5. Consent to Liens and Subordination

- (a) In furtherance of the terms and conditions of the GIA, each Contracting Party hereby expressly:
 - (i) acknowledges and irrevocably consents to the Security Interests granted by Labrador Transco in favour of the Security Trustee in the GIA and any future grant of any Security Interests by Labrador Transco in favour of the Security Trustee in the GIA, and, in connection with any such creation of Security Interests, the filing or registration of any financing statements, registration forms, or any similar documents;
 - (ii) agrees that, save as is otherwise expressly agreed to in writing, no Agent Party shall incur any obligation of Labrador Transco or otherwise whatsoever to the Contracting Parties under the terms of the GIA;
 - (iii) agrees that, save as is otherwise expressly agreed to in writing, any Agent Party shall have the right, but not the obligation, to perform any obligation required of Labrador Transco under the GIA at any time. Nothing herein shall require any Agent Party to cure any breach by Labrador Transco of the GIA or to perform such obligation of Labrador Transco thereunder;
 - (iv) agrees that upon the Security Interests becoming enforceable, the Security Trustee, or any nominee or designee thereof, or any receiver of Labrador Transco or any receiver of the assets of Labrador Transco appointed by or on the application of the Security Trustee (the Security Trustee, any such

nominee, designate or receiver shall be referred to herein as an “**Agent Party**”) shall, upon written notice (a “**Default Notice**”) to each Contracting Party, and in accordance with its respective interest, be entitled to enforce the Security Interests against the GIA (including its intention to take Operational Control of the LTA), including the right to enforce and enjoy all of the rights that Labrador Transco has or may have under the GIA, subject to **Section 5(b)**, to the same extent and in the same manner as if it were an original party thereto in the place of Labrador Transco. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Agent Party to pay any amounts that may be accrued or past due by Labrador Transco under the GIA;

- (v) agrees that whether or not an Agent Party gives a Default Notice, an Agent Party may assign the GIA to a third party that is a Qualified Assignee subject to the provisions of Article 20 of the GIA (an “**Acquiror**”). Such an assignment to the Acquiror is conditional upon such Acquiror agreeing to observe and perform all of Labrador Transco’s obligations under the GIA arising after the date of such assignment. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Acquiror to pay any amounts that may be accrued or past due by Labrador Transco under the GIA;
- (vi) upon any Agent Party completing such an assignment to an Acquiror, each Agent Party shall be released from any and all obligations that such Agent Party may have hereunder to perform the obligations of Labrador Transco to the Contracting Parties under the GIA. Nothing in this Agreement, and neither the giving of a Default Notice nor any assignment pursuant to **Section 5(v)**, releases Labrador Transco from its obligations to the Contracting Parties under and in relation to the GIA;
- (vii) agrees that it shall not have any right to cancel or terminate the GIA including in the event of any breach by Labrador Transco of the GIA that is particular to Labrador Transco and that is not curable by the Security Trustee or any other Agent Party at such time, such as the insolvency, bankruptcy, general assignment for the benefit of creditors or the appointment of a receiver of Labrador Transco and that the GIA shall remain in full force and effect until all Secured Obligations are paid in full;
- (viii) agrees to provide to the Security Trustee or any other Agent Party at such time, at the same time that any notice is provided to Labrador Transco of any breach of the GIA or of any proceedings under the GIA, the same notice that it provides to Labrador Transco. All notices to any Agent Party shall be in writing and shall be delivered to such Agent Party at the addresses set forth in **Section 18** or any other address confirmed to each Contracting Party from time to time; and

- (ix) subordinates and postpones the payment of all amounts owing to it and security taken with respect to such amounts from time to time by Labrador Transco pursuant to the GIA to the prior and indefeasible payment in full of all Secured Obligations.

- (b) In the event either Muskrat or NLH (the “**Enforcing Party**”) takes steps to exercise its rights as subordinated secured creditor pursuant to the Subordinated GSA, after having received the written consent of the Collateral Agent (the “**Consent**”), which may only be provided in accordance with the Requisite Instructions (as such term is defined in the Collateral Agency Agreement), such Enforcing Party acknowledges, confirms and agrees that, as a condition to the Consent, whether it is explicitly expressed in the Consent or not, and as a condition to the exercise of such rights under the Subordinated GSA, that such Enforcing Party shall have taken such steps and actions as shall be legally required to ensure the continuation, on an enforceable, valid, binding, and unconditional as to continuance, basis, of the obligations and requirements of each of the parties to the GIA, including explicitly those relating to the construction, operation and maintenance of the LTA and the payment of all payment amounts required to be made under the GIA such that payments will continue to be made, on the terms and on the basis, as required by the GIA without interruption, reduction, adjustment, termination or otherwise, and strictly in accordance with the terms of the GIA. Each Enforcing Party acknowledges and confirms that it is the intention of this provision, and that it is a condition to the Consent, that there be no change to the obligations under the GIA in the event of any exercise of the security under the Subordinated GSA, including no delay to the payments required pursuant to the GIA, regardless of the legal effect of the exercise of the security, and that all payments shall continue and shall be paid such that they will be received by the Collateral Agent for and on behalf of the GAA Finance Parties and for application in accordance with the terms of the GIA and the Financing Documents. Each of the parties hereto acknowledges that the Financing Documents, and the guarantees and assurances in relation thereto provided by, inter alia, Canada have been provided based upon the continued requirement for the construction, operation and maintenance of the LTA and the continuation of the payments and obligations pursuant to the terms of the GIA throughout the term expressed in the GIA and the Financing Documents. As a covenant and agreement directly in favour of the Collateral Agent for the benefit of the GAA Finance Parties, and specifically for and on behalf of Canada, each Enforcing Party as the secured party under the Subordinated GSA will take such steps and actions, provide such further assurances, and enter into such agreements with the Collateral Agent, or such other party as may be designated or named by the Collateral Agent, in order to preserve and continue the contractual obligations of the GIA, as applicable, and to achieve the intention of this provision.

6. Specified Default Provisions

The Security Trustee and the Contracting Parties covenant and agree that prior to enforcement of the Security Interests by the Agent Party:

- (a) the Agent Party shall provide the Default Notice to the Contracting Parties concurrently with any default notice issued by the Agent Party to Labrador Transco under the Security Interests, which notice shall include the then outstanding balance of the Secured Obligations;
- (b) the Agent Party shall provide NLH 30 days notice following delivery of the Default Notice of its intention to take Operational Control of the LTA pursuant to the Security Interests. During such notice period, provided no NLH default has occurred and is then continuing, NLH may elect pursuant to Section 15.6(a) of the GIA to assume Operational Control of the LTA pursuant to the terms and conditions set out in Section 15.6(b) of the GIA, provided that NLH also elects pursuant to Section 15.6(b)(i) of the GIA to assume responsibility for LTA O&M Activities (as defined in the GIA) while NLH has Operational Control. Provided NLH assumes and maintains Operational Control of the LTA and responsibility for LTA O&M Activities (as defined in the GIA) and continues to pay the Base Block Payments as provided in the PPA, during the period of such Operational Control, such that MF pays the LTA Payments pursuant to the GIA, the Agent Party shall take no further steps to enforce the Security Interests against the LTA or the GIA;
- (c) if NLH does not elect to assume Operational Control of the LTA pursuant to **Section 6(b)**, the Agent Party may, by notice given to NLH, demand that NLH assume Operational Control of the LTA. If NLH fails to assume Operational Control and responsibility for LTA O&M Activities (as defined in the GIA) following receipt of such notice, the Agent Party may continue to enforce all its rights pursuant to the Security Interests. NLH shall have no liability in damages or otherwise for failure to assume Operational Control;
- (d) within the Remedies Consultation Period related to a Default Notice from the Agent Party, NLH has the right but not the obligation to Pay in Full the Secured Obligations directly to the Agent Party through the Labrador Transco Project Funding Account and upon receipt of such payment, the Agent Party shall cease enforcement proceedings and release its Security Interests following which Labrador Transco shall recalculate the future LTA Capital Costs Recovery pursuant to **Schedule 1** of the GIA to reflect payment of the Secured Obligations and the LTA Capital Costs Recovery portion of the future LTA Payments under the GIA shall be adjusted accordingly;
- (e) NLH shall not be subrogated to any right of the Agent Party until all the Secured Obligations are Paid in Full as provided in **Section 6(d)**. Thereafter,

- (i) NLH shall be subrogated to the rights of Labrador Transco and the Agent Party under, pursuant to and otherwise in respect of the Financing Documents, and
 - (ii) NLH may require Labrador Transco and the Agent Party to assign to it any of their rights then remaining under the Financing Documents with respect to the Secured Obligations, but any such assignment shall be without representation or warranty by, or recourse against, MF and the Agent Party; and
- (f) an assignment of the GIA shall only occur to an Acquiror and such assignment shall be conditional upon such Acquiror agreeing to observe and perform all of Labrador Transco's obligations under the GIA arising after the date of such assignment.

7. Arrangements Regarding Payments

All payments to be made by a Contracting Party to Labrador Transco under the GIA shall be made, in lawful money of Canada, directly for deposit into the Labrador Transco Project Funding Account, and shall be accompanied by a notice from such Contracting Party stating that such payments are made under the GIA. Labrador Transco hereby authorizes and irrevocably directs each Contracting Party to make such payments as aforesaid and agrees such payment shall satisfy each Contracting Party's obligation to pay such amounts to Labrador Transco under the GIA.

8. Communications from Contracting Party

Until such time as an Agent Party notifies the Contracting Parties in writing of its exercise of rights under the Collateral Trust Deed, each Contracting Party shall continue to communicate directly with Labrador Transco with regard to its continuing obligations under the GIA. Upon receipt by a Contracting Party of written instructions from an Agent Party pursuant to its exercise of rights under the Collateral Trust Deed, such Contracting Party agrees to and shall comply with and treat any and all written instructions received from such Agent Party as if they came directly from Labrador Transco.

9. Obligations of the Contracting Parties under the GIA

Each Contracting Party acknowledges and agrees with the Security Trustee that neither this Agreement nor any Security Interests created by Labrador Transco in favour of the Security Trustee shall in any way lessen or relieve such Contracting Party from its obligation to observe, satisfy and perform each and every term, condition, other provision and obligation set forth in or required to be observed by such Contracting Party in order to fulfill its obligations under the GIA or any obligations of such Contracting Party to Labrador Transco.

10. Assignments to other trustees, administrative agents

Labrador Transco and each Contracting Party agrees that the Security Trustee may assign the rights under this Agreement, in whole or in part, to any other trustee from time to time

to the same extent, and on and subject to the same terms and conditions, as the Security Trustee may assign its rights under the Collateral Trust Deed without the consent of the Contracting Parties or Labrador Transco, and that each such assignee shall be entitled to rely on the representations, warranties, acknowledgements, confirmations, covenants and agreements of each of Labrador Transco and of each Contracting Party herein contained. All references to the Security Trustee in this Agreement shall be deemed to refer to the Security Trustee and/or to any such assignee, and all its actions permitted to be taken by the Security Trustee under this Agreement may be taken by any such assignee. The Security Trustee shall provide notice of any such assignment to the Contracting Party.

11. Further Assurances

Each of the parties hereto agrees to do all such other acts and things and to execute all such other documents as may be reasonably required to give effect to the purpose and intent of this Agreement.

12. Grammatical variations, plural, gender, headings

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined or given extended meanings shall be construed in like manner. Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Agreement.

13. Agreements

Each reference in this Agreement to any document (including this Agreement, the GIA and any other defined term that is a document) shall be construed so as to include such document (including any attached schedules, appendices and exhibits) and each change thereto, made at or before the time in question. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this agreement and not to any particular Recital, Article, Section, subsection, paragraph, subparagraph, clause or other portion of this Agreement.

14. Severability

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable. Each Contracting Party and Labrador Transco shall, at the request of the Security Trustee or any Agent Party, negotiate in good faith with the requesting party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by applicable Law.

15. Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the Province of Newfoundland and Labrador, including the federal Laws of Canada applicable therein, but excluding any conflict of law rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to any matter arising under, by reason of or otherwise in respect of this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or email in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

17. Conflict

If there is any inconsistency or conflict between this Agreement and the GIA, this Agreement shall govern.

18. Notices

Any demand, notice or other communication to be made or given hereunder (“**Notice**”) shall be in writing and may be made or given by mailing it by prepaid registered mail or by transmitting it by facsimile addressed to the respective parties as follows:

- (a) if to Labrador Transco:

Labrador Transmission Corporation
500 Columbus Drive
P.O. Box 15100
St. John’s, NL A1B 0M6
Attention: Corporate Secretary
Fax: (709) 737-1782

- (b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John’s, NL

A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) if to the Security Trustee:

Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario
M5J 2Y1
Attention: Manager, Corporate Trust Services
Fax: 416-981-9777

(d) if to the Collateral Agent:

The Toronto-Dominion Bank, as Collateral Agent
TD Bank Tower
66 Wellington St. W., 9th Floor
Toronto, Ontario, Canada. M5K 1A2
Telephone: 416 982-2196
Attention: Michael A. Freeman, Vice President Loan Syndications-Agency
Fax: 416 944-6976
Email: michael.freeman@tdsecurities.com

(e) if to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

(f) if to MF:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15000
St. John's, NL
A1B 0M4
Attention: Corporate Secretary
Fax: (709) 737-1782

(g) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(h) if to the NLSO:

Systems Operation Department
Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

or to such other address, email or facsimile number as may be designated by notice given by any party to the other. Any Notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email or facsimile, will be conclusively deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by facsimile.

19. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon Labrador Transco, the Security Trustee, each Agent Party and each Contracting Party and their respective successors and permitted assigns; provided that, the Contracting Parties shall not assign or transfer any of their respective rights hereunder without the prior written consent of the Security Trustee and each Agent Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**LABRADOR TRANSMISSION CORPORATION,
as a Contracting Party**

Per:

Name:

Title:

Per:

Name:

Title:

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Security Trustee

Per:

Name:

Title:

Per:

Name:

Title:

TORONTO DOMINION BANK,
as Collateral Agent

Per:

Name:

Title:

Per:

Name:

Title:

**NEWFOUNDLAND AND LABRADOR HYDRO,
as a Contracting Party**

Per:

Name:

Title:

Per:

Name:

Title:

MUSKRAT FALLS CORPORATION

Per:

Name:

Title:

**NEWFOUNDLAND AND LABRADOR HYDRO,
(in its capacity as the NLSO) as a Contracting Party**

Per:

Name:

Title:

Per:

Name:

Title:

GENERATOR INTERCONNECTION AGREEMENT

SCHEDULE 8

MUSKRAT STEP-IN AGREEMENT

**SCHEDULE 8
MUSKRAT STEP-IN AGREEMENT**

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STEP-IN AGREEMENT

THIS STEP-IN AGREEMENT is made effective the 29th day of November, 2013 (the “**Effective Date**”).

AMONG:

MUSKRAT FALLS CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**MF**”)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as collateral trustee under the deed of trust and mortgage dated November 29, 2013, executed in its favour by MF (the said deed of trust and mortgage, as changed and in effect from time to time, the “**Collateral Trust Deed**”), for and on behalf of the Senior Secured Bondholders (as defined therein) (the “**Security Trustee**”)

- and -

TORONTO DOMINION BANK, in its capacity as collateral agent under the collateral agency agreement dated November 29, 2013, executed in its favour by, *inter alia*, MF (as changed and in effect from time to time, the “**Collateral Agency Agreement**”), for and on behalf of the GAA Finance Parties (as defined therein) (the “**Collateral Agent**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador), being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007* and a wholly-owned subsidiary of Nalcor (“**NLH**”)

- and -

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador and a wholly-owned subsidiary of Nalcor (“**Labrador Transco**”)

- and -

NEWFOUNDLAND AND LABRADOR SYSTEM OPERATOR, the systems operation department of NLH, (the “**NLSO**”), in its capacity as such

(each one of NLH, the NLSO and Labrador Transco shall be referred to as a “**Contracting Party**” and collectively as the “**Contracting Parties**”)

WHEREAS:

- A. MF has entered into the Generator Interconnection Agreement made as of November 29, 2013 with Labrador Transco and the NLSO (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of MF therein (as the context requires and/or so admits) collectively, the “**GIA**”), pursuant to which NLH shall be assigned a right to assume Operational Control of the LTA;
- B. Pursuant to the Collateral Trust Deed and various other security documents, the Security Trustee has been or will be granted Liens in all of the assets and rights of MF, including the GIA (collectively, the “**Security Interests**”).

NOW THEREFORE in consideration of the premises and the agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. Definitions

The words and expressions (capitalized or not), wherever used in this Agreement s, or in any agreement supplemental or ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings ascribed thereto.

(a) General Definitions - Unless the context otherwise requires, in this Agreement:

“**Account Holder**” has the meaning set forth in the Collateral Trust Deed;

“**Acquiror**” has the meaning set forth in **Section 5(a)(v)**;

“**Agent Party**” has the meaning set forth in **Section 5(a)(iv)**;

“**Base Block Payments**” has the meaning set forth in the PPA;

“**Business Day**” means any day excluding Saturday, Sunday or any other day which in the City of St. John’s, Newfoundland and Labrador, is a legal holiday or a day on which banks are authorized by Law or by local proclamation to close;

“**Canada**” means Her Majesty the Queen in Right of Canada;

“**Collateral Agency Agreement**” has the meaning set forth at the commencement hereof;

“**Collateral Agent**” has the meaning set forth at the commencement hereof;

“**Collateral Trust Deed**” has the meaning set forth at the commencement hereof;

“**Consent**” has the meaning set forth in **Section 5(b)**;

“**Contracting Party**” and “**Contracting Parties**” has the meaning set forth at the commencement hereof;

“**Default Notice**” has the meaning set forth in **Section 5(a)(iv)**;

“**Financing Documents**” has the meaning set forth in the GIA;

“**GAA Finance Parties**” has the meaning set forth in the Financing Documents;

“**GIA**” has the meaning set forth in **Recital A**;

“**LTA**” has the meaning set forth in the GIA;

“**LTA Payments**” has the meaning set forth in the GIA;

“**Law**” means all applicable provisions of laws, ordinances, codes, rules, regulations, orders, orders in council, directives, decrees, administrative orders, guidelines, policies of any governmental entity, as well as the applicable provisions of any treaty and any order and decree of any tribunal and arbitrator after the expiration of any appeal period;

“**Labrador Transco**” has the meaning set forth at the commencement hereof;

“**Lien**” means (i) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation, (ii) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), including by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms, (iii) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and (iv) any agreement to grant any of the foregoing rights or interests;

“**MF**” has the meaning set forth at the commencement hereof;

“**MF Plant**” has the meaning set forth in the PPA;

“**Muskrat Project Funding Account**” means the account of MF maintained with the Account Holder and bearing number [●];

“**NLH**” has the meaning set forth at the commencement hereof;

“**Operational Control**” means performance of, or the authority to perform, direct or authorize performance of, security monitoring, adjustment of generation and transmission

resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for Reliability, planning assessments, coordination with Control Area operators, voltage reductions, load shedding and control of physical access to the generation and transmission resources;

“**PPA**” means the Power Purchase Agreement as set forth in the GIA;

“**Paid in Full**” means, in relation to any indebtedness that is or may become owing to any person, the permanent, indefeasible and irrevocable payment in cash to such person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to insolvency events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such person to lend or otherwise extend credit or pay any indebtedness; and “**Pay in Full**” shall have a correlative meaning;

“**Qualified Assignee**” has the meaning set forth in the GIA;

“**Remedies Consultation Period**” has the meaning set forth in the Financing Documents;

“**Secured Obligations**” has the meaning set forth in the Collateral Trust Deed;

“**Security Interests**” has the meaning set forth in **Recital B**;

“**Security Trustee**” has the meaning set forth at the commencement hereof;

“**Senior Secured Bondholders**” has the meaning set forth in the Collateral Trust Deed; and

“**Subordinated GSA**” means the General Security Agreement entered into between Muskrat and NLH pursuant to Section 14.6(d) of the PPA and substantially in the form attached as Schedule 6 to the PPA, which has been subordinated to the Security Interests by a Subordination Acknowledge in the form of Appendix A thereto.

(b) Extended Meanings - To the extent the context so admits, in this Agreement the following words and expressions shall be given the extended meanings set forth opposite them:

an “**agreement**” - any agreement, oral or written, simple contract or specialty, bond, bill of exchange, indenture, instrument or undertaking;

“**asset**” - any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset;

a “**breach**” - any breach, default, event of default, or any equivalent or similar event however described under any agreement;

“cancel” - cancel, surrender, repudiate, disclaim, terminate or suspend;

“change” - change, modify, alter, amend, supplement, restate, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive;

“claim” - claim, claim over, cross-claim, counter-claim, defence, demand, liability, proceeding, judgment or order or award of any court, other governmental authority, arbitrator or other alternative dispute resolution authority;

a **“document”** - a written agreement, consent, waiver, certificate, notice or other written document or instrument;

a **“government”** - (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it;

“governmental authority” - any court, administrative tribunal, regulatory authority, government, union of nations or any agency or other authority of a government or union of nations;

“include” - include without limitation, and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters;

“losses and expenses” - losses, costs, expenses, damages, penalties and judgments and awards of any court or other governmental authority, arbitrator, mediator or other alternative dispute resolution authority, including any applicable awarded costs, and legal fees and disbursements on a solicitor and client basis;

“obligations” - indebtedness, obligations, promises, covenants, responsibilities, acts, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“person”** - an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a corporation organized under the laws of any jurisdiction, a government or agency of a government or any other legal or commercial entity;

“proceeding” - any legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding;

“receiver” - a privately appointed or court appointed receiver or receiver and manager, and, except in the definition of “Agent Party”, an interim receiver, liquidator, trustee in bankruptcy, administrator, administrative receiver and any other like or similar official;

a **“registration”** - any notice to or filing, publication, recording or registration with any governmental authority having jurisdiction with respect to any specified person, transaction or event, or any of such person's assets;

“rights” - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities, recourses and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“successor”** of a person (the **“relevant party”**) - (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates and (ii) any person to whom all or substantially all of the assets of the relevant party are transferred;

“written” and **“in writing”** - an original writing, a pdf or facsimile copy of a writing or an email.

2. Representations and Warranties

Each Contracting Party, for itself only, hereby represents, warrants, acknowledges and confirms to the Security Trustee, with the knowledge that the Security Trustee and the Senior Secured Bondholders are relying on such representations, warranties, acknowledgments and confirmations for the purpose of entering into the Collateral Trust Deed and the Financing Documents, that:

- (a) each Contracting Party is a corporation duly and validly incorporated and existing under the laws of Newfoundland and Labrador and each has the legal capacity and right to own its assets and to carry on its business in each jurisdiction in which its assets are located or it carries on business;
- (b) each Contracting Party has the legal capacity and right to enter into this Agreement and the GIA and do all acts and things and execute and deliver all documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms and conditions hereof and thereof;
- (c) each Contracting Party has taken all necessary action to authorize the execution and delivery of this Agreement and the GIA, the creation and performance of its obligations hereunder and thereunder as well as the consummation of the transactions contemplated hereunder and thereunder;
- (d) each Contracting Party has duly executed and delivered this Agreement and the GIA;
- (e) none of the authorization, execution, delivery or performance of this Agreement or the GIA by each Contracting Party, nor the consummation of any of the transactions contemplated hereby or thereby;

- (i) requires any authorization to be obtained or registration to be made (except such as have already been obtained or made and are now in full force and effect and those not yet required);
 - (ii) conflicts with, contravenes or gives rise to any breach under (A) any of the articles (which, in the case of NLH, are the provisions of the *Hydro Corporation Act, 2007* (Newfoundland and Labrador), the *Energy Corporations Act* (Newfoundland and Labrador) or by-laws of either Contracting Party, (B) the provisions of any document or obligation to which either Contracting Party is a party or by which such Contracting Party or any of its assets are or may become bound or (iii) any Law;
 - (iii) has resulted or will result in the creation or imposition of any Lien upon any of the assets of either Contracting Party, other than Liens subordinated to the Security Interests;
- (f) each of this Agreement and the GIA constitutes a valid and legally binding obligation of each Contracting Party enforceable against it in accordance with its terms, subject only to Laws relating to bankruptcy, insolvency, winding-up, dissolution, administration, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion;
- (g) the GIA is in full force and effect and has not been changed and there is no dispute (to the best of its knowledge) thereunder now existing, and after giving effect to the granting of the Security Interests by MF to the Security Trustee in the GIA, and after giving effect to this Agreement by each Contracting Party, there exists no event or condition which would constitute a breach, or which, with the giving of notice or lapse of time or both, would have constituted a breach under the GIA;
- (h) each:
- (i) Contracting Party; and
 - (ii) to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, MF,
- is in full compliance in all material respects with and has performed its obligations under the Contracts which are required to be complied with and/or performed to date;
- (i) each Contracting Party has no outstanding claims of a material nature against MF in respect of the GIA;

- (j) there are no existing circumstances which could give rise to a material breach by either Contracting Party or, to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, MF, under the GIA; and
- (k) neither Contracting Party has delivered to or received from MF, any notice purporting to cancel the GIA.

3. Benefits hereunder independent to those of MF

Each Contracting Party hereby acknowledges and agrees that the rights of each Agent Party under this Agreement shall be independent to those of MF under the GIA and may be enforced by such Agent Party independently from MF.

4. Agent Party not bound to exercise rights

Each Contracting Party hereby acknowledges and agrees that, save as otherwise expressly agreed to in writing, nothing herein contained shall be construed or interpreted as obliging any Agent Party, nor shall any Agent Party be liable for the failure, to exercise any of the rights afforded to it hereunder or under the Collateral Trust Deed. Each Contracting Party hereby further acknowledges and agrees that no Agent Party shall be liable for any loss and expense incurred or suffered by such Contracting Party as a result of any delay by, or any failure of, such Agent Party to exercise any of, the rights afforded to such Agent Party hereunder or under the Collateral Trust Deed.

5. Consent to Liens and Subordination

- (a) In furtherance of the terms and conditions of the GIA, each Contracting Party hereby expressly:
 - (i) acknowledges and irrevocably consents to the Security Interests granted by MF in favour of the Security Trustee in the GIA and any future grant of any Security Interests by MF in favour of the Security Trustee in the GIA, and, in connection with any such creation of Security Interests, the filing or registration of any financing statements, registration forms, or any similar documents;
 - (ii) agrees that, save as is otherwise expressly agreed to in writing, no Agent Party shall incur any obligation of MF or otherwise whatsoever to the Contracting Parties under the terms of the GIA;
 - (iii) agrees that, save as is otherwise expressly agreed to in writing, any Agent Party shall have the right, but not the obligation, to perform any obligation required of MF under the GIA at any time. Nothing herein shall require any Agent Party to cure any breach by MF of the GIA or to perform such obligation of MF thereunder;

- (iv) agrees that upon the Security Interests becoming enforceable, the Security Trustee, or any nominee or designee thereof, or any receiver of MF or any receiver of the assets of MF appointed by or on the application of the Security Trustee (the Security Trustee, any such nominee, designate or receiver shall be referred to herein as an “**Agent Party**”) shall, upon written notice (a “**Default Notice**”) to each Contracting Party, and in accordance with its respective interest, be entitled to enforce, the Security Interests against the GIA (including its intention to take Operational Control of the LTA), including the right to enforce and enjoy all of the rights that MF has or may have under the GIA, subject to **Section 6**, to the same extent and in the same manner as if it were an original party thereto in the place of MF. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Agent Party to pay any amounts that may be accrued or past due by MF under the GIA;
- (v) agrees that whether or not an Agent Party gives a Default Notice, an Agent Party may assign the GIA to a third party that is a Qualified Assignee subject to the provisions of Article 20 of the GIA (an “**Acquiror**”). Such an assignment to the Acquiror is conditional upon such Acquiror agreeing to observe and perform all of MF's obligations under the GIA arising after the date of such assignment. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Acquiror to pay any amounts that may be accrued or past due by MF under the GIA;
- (vi) upon any Agent Party completing such an assignment to an Acquiror, each Agent Party shall be released from any and all obligations that such Agent Party may have hereunder to perform the obligations of MF to the Contracting Parties under the GIA. Nothing in this Agreement, and neither the giving of a Default Notice nor any assignment pursuant to **Section 5(a)(v)**, releases MF from its obligations to the Contracting Parties under and in relation to the GIA;
- (vii) agrees that it shall not have any right to cancel or terminate the GIA including in the event of any breach by MF of the GIA that is particular to MF and that is not curable by the Security Trustee or any other Agent Party at such time, such as the insolvency, bankruptcy, general assignment for the benefit of creditors or the appointment of a receiver of MF and that the GIA shall remain in full force and effect until all Secured Obligations are paid in full;
- (viii) agrees to provide to the Security Trustee or any other Agent Party at such time, at the same time that any notice is provided to MF of any breach of the GIA or of any proceedings under any GIA, the same notice that it provides to MF. All notices to any Agent Party shall be in writing and shall be delivered to such Agent Party at the addresses set forth in **Section 18** or any other address confirmed to each Contracting Party from time to time; and

- (ix) subordinates and postpones the payment of all amounts owing to it and security taken with respect to such amounts from time to time by MF pursuant to the GIA to the prior and indefeasible payment in full of all Secured Obligations.

- (b) In the event that NLH takes steps to exercise its rights as subordinated secured creditor pursuant to the Subordinated GSA, after having received the written consent of the Collateral Agent (the “**Consent**”), which may only be provided in accordance with the Requisite Instructions (as such term is defined in the Collateral Agency Agreement), NLH acknowledges, confirms and agrees that, as a condition to the Consent, whether it is explicitly expressed in the Consent or not, and as a condition to the exercise of such rights under the Subordinated GSA, that NLH shall have taken such steps and actions as shall be legally required to ensure the continuation, on an enforceable, valid, binding, and unconditional as to continuance, basis, of the obligations and requirements of each of the parties to the GIA, including explicitly those relating to the construction, operation and maintenance of the LTA and the payment of all payment amounts required to be made under the GIA such that payments will continue to be made, on the terms and on the basis, as required by the GIA without interruption, reduction, adjustment, termination or otherwise, and strictly in accordance with the terms of the GIA. NLH acknowledges and confirms that it is the intention of this provision, and that it is a condition to the Consent, that there be no change to the obligations under the GIA in the event of any exercise of the security under the Subordinated GSA, including no delay to the payments required pursuant to the GIA, regardless of the legal effect of the exercise of the security, and that all payments shall continue and shall be paid such that they will be received by the Collateral Agent for and on behalf of the GAA Finance Parties and for application in accordance with the terms of the GIA and the Financing Documents. Each of the parties hereto acknowledges that the Financing Documents, and the guarantees and assurances in relation thereto provided by, inter alia, Canada have been provided based upon the continued requirement for the construction, operation and maintenance of the MF Plant and the continuation of the payments and obligations pursuant to the terms of the GIA throughout the term expressed in the GIA and the Financing Documents. As a covenant and agreement directly in favour of the Collateral Agent for the benefit of the GAA Finance Parties, and specifically for and on behalf of Canada, NLH as the secured party under the Subordinated GSA will take such steps and actions, provide such further assurances, and enter into such agreements with the Collateral Agent, or such other party as may be designated or named by the Collateral Agent, in order to preserve and continue the contractual obligations of the GIA, as applicable, and to achieve the intention of this provision.

6. Specified Default Provisions

The Security Trustee and the Contracting Parties covenant and agree that prior to enforcement of the Security Interests by the Agent Party:

- (a) the Agent Party shall provide the Default Notice to the Contracting Parties concurrently with any default notice issued by the Agent Party to MF under the Security Documents, which notice shall include the then outstanding balance of the Secured Obligations;
- (b) the Agent Party shall provide the Contracting Parties 30 days notice following delivery of the Default Notice of its intention to take Operational Control of the MF Plant pursuant to its Security Interests. During such notice period, provided no NLH Default has occurred and is then continuing, NLH may elect pursuant to Section 14.6(b) of the PPA to assume Operational Control of the MF Plant pursuant to the terms and conditions set out in Section 14.6(b) of the PPA, provided that NLH also elects pursuant to Section 14.6(b)(i) of the PPA to assume responsibility for O&M Activities (as defined in the PPA) while NLH has Operational Control. Provided NLH assumes and maintains Operational Control of the MF Plant and responsibility for the O&M Activities (as defined in the PPA) and continues to pay the Base Block Payments as provided in the PPA, during the period of such Operational Control, the Agent Party shall take no further steps to enforce the Security Interests against the MF Plant or the GIA;
- (c) if NLH does not elect to assume Operational Control of the MF Plant pursuant to **Section 6(b)**, the Agent Party may, by notice given to NLH, demand that NLH assume Operational Control of the MF Plant. If NLH fails to assume Operational Control and responsibility for the O&M Activities (as defined in the PPA) following receipt of such notice, the Agent Party may continue to enforce all its rights pursuant to the Security Interests. NLH shall have no liability in damages or otherwise for failure to assume Operational Control;
- (d) within the Remedies Consultation Period related to a Default Notice from the Agent Party, NLH has the right but not the obligation to Pay in Full the Secured Obligations directly to the Agent Party through the Muskrat Project Funding Account and upon receipt of such payment, the Agent Party shall cease enforcement proceedings and release its Security Interests following which MF shall recalculate the future Base Block Capital Costs Recovery pursuant to **Schedule 1** of the PPA to reflect payment of the Secured Obligations and the Base Block Capital Costs Recovery of the future Base Block Payments under the PPA shall be adjusted accordingly;
- (e) NLH shall not be subrogated to any right of the Agent Party until all the Secured Obligations are Paid in Full as provided in **Section 6(d)**. Thereafter,
 - (i) NLH shall be subrogated to the rights of the MF and the Agent Party under, pursuant to and otherwise in respect of the Financing Documents, and
 - (ii) NLH may require MF and the Agent Party to assign to it any of their rights then remaining under the Financing Documents with respect to the Secured Obligations, but any such assignment shall be without representation or warranty by, or recourse against, MF and the Agent Party; and

- (f) an assignment of the GIA shall only occur to an Acquiror and such assignment shall be conditional upon such Acquiror agreeing to observe and perform all of MF's obligations under the GIA arising after the date of such assignment.

7. Arrangements Regarding Payments

All payments to be made by a Contracting Party to MF under the GIA shall be made, in lawful money of Canada, directly for deposit into the Muskrat Project Funding Account, and shall be accompanied by a notice from such Contracting Party stating that such payments are made under the GIA. MF hereby authorizes and irrevocably directs each Contracting Party to make such payments as aforesaid and agrees such payment shall satisfy each Contracting Party's obligation to pay such amounts to MF under the GIA.

8. Communications from Contracting Party

Until such time as an Agent Party notifies the Contracting Parties in writing of its exercise of rights under the Collateral Trust Deed, each Contracting Party shall continue to communicate directly with MF with regard to its continuing obligations under the GIA. Upon receipt by a Contracting Party of written instructions from an Agent Party pursuant to its exercise of rights under the Collateral Trust Deed, such Contracting Party agrees to and shall comply with and treat any and all written instructions received from such Agent Party as if they came directly from MF.

9. Obligations of the Contracting Parties under the GIA

Each Contracting Party acknowledges and agrees with the Security Trustee that neither this Agreement nor any Security Interests created by MF in favour of the Security Trustee shall in any way lessen or relieve such Contracting Party from its obligation to observe, satisfy and perform each and every term, condition, other provision and obligation set forth in or required to be observed by such Contracting Party in order to fulfill its obligations under the GIA or any obligations of such Contracting Party to MF.

10. Assignments to other trustees, administrative agents

MF and each Contracting Party agrees that the Security Trustee may assign the rights under this Agreement, in whole or in part, to any other trustee from time to time to the same extent, and on and subject to the same terms and conditions, as the Security Trustee may assign its rights under the Collateral Trust Deed without the consent of the Contracting Parties or MF, and that each such assignee shall be entitled to rely on the representations, warranties, acknowledgements, confirmations, covenants and agreements of each of MF and of each Contracting Party herein contained. All references to the Security Trustee in this Agreement shall be deemed to refer to the Security Trustee and/or to any such assignee, and all its actions permitted to be taken by the Security Trustee under this Agreement may be taken by any such assignee. The Security Trustee shall provide notice of any such assignment to the Contracting Party.

11. Further Assurances

Each of the parties hereto agrees to do all such other acts and things and to execute all such other documents as may be reasonably required to give effect to the purpose and intent of this Agreement.

12. Grammatical variations, plural, gender, headings

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined or given extended meanings shall be construed in like manner. Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Agreement.

13. Agreements

Each reference in this Agreement to any document (including this Agreement, the GIA and any other defined term that is a document) shall be construed so as to include such document (including any attached schedules, appendices and exhibits) and each change thereto, made at or before the time in question. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this agreement and not to any particular Recital, Article, Section, subsection, paragraph, subparagraph, clause or other portion of this Agreement.

14. Severability

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable. Each Contracting Party and MF shall, at the request of the Security Trustee or any Agent Party, negotiate in good faith with the requesting party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by applicable Law.

15. Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the Province of Newfoundland and Labrador, including the federal Laws of Canada applicable therein, but excluding any conflict of law rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to any matter arising under, by reason of or otherwise in respect of this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or email in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

17. Conflict

If there is any inconsistency or conflict between this Agreement and the GIA, this Agreement shall govern.

18. Notices

Any demand, notice or other communication to be made or given hereunder (“**Notice**”) shall be in writing and may be made or given by mailing it by prepaid registered mail or by transmitting it by facsimile addressed to the respective parties as follows:

(a) if to MF:

Muskrat Falls Corporation
500 Columbus Drive
P.O. Box 15000
St. John’s, NL
A1B 0M4
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John’s, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) If to the Security Trustee:

Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario

M5J 2Y1
Attention: Manager, Corporate Trust Services
Fax: 416-981-9777

(d) If to the Collateral Agent:

The Toronto-Dominion Bank, as Collateral Agent
TD Bank Tower
66 Wellington St. W., 9th Floor
Toronto, Ontario, Canada. M5K 1A2
Telephone: 416 982-2196
Attention: Michael A. Freeman, Vice President Loan Syndications-Agency
Fax: 416 944-6976
Email: michael.freeman@tdsecurities.com

(e) If to NLH:

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

(f) if to Labrador Transco:

Labrador Transmission Corporation
500 Columbus Drive
P.O. Box 15100
St. John's, NL A1B 0M6
Attention: Corporate Secretary
Fax: (709) 737-1782

(g) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(h) if to the NLSO:

Systems Operation Department

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

or to such other address, email or facsimile number as may be designated by notice given by any party to the other. Any Notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email or facsimile, will be conclusively deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by facsimile.

19. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon MF, the Security Trustee, each Agent Party and each Contracting Party and their respective successors and permitted assigns; provided that, the Contracting Parties shall not assign or transfer any of their respective rights hereunder without the prior written consent of the Security Trustee and each Agent Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

MUSKRAT FALLS CORPORATION

Per:

Name:

Title:

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Security Trustee

Per:

Name:

Title:

Per:

Name:

Title:

TORONTO DOMINION BANK,
as Collateral Agent

Per:

Name:

Title:

Per:

Name:

Title:

**NEWFOUNDLAND AND LABRADOR HYDRO,
as a Contracting Party**

Per:

Name:

Title:

Per:

Name:

Title:

LABRADOR TRANSMISSION CORPORATION,
as a Contracting Party

Per:

Name:

Title:

Per:

Name:

Title:

**NEWFOUNDLAND AND LABRADOR HYDRO,
(in its capacity as the NLSO) as a Contracting Party**

Per:

Name:

Title:

Per:

Name:

Title:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP

and

LABRADOR-ISLAND LINK OPERATING CORPORATION

and

NEWFOUNDLAND AND LABRADOR HYDRO

TRANSMISSION FUNDING AGREEMENT

November 29, 2013

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SCHEDULE 1 LIL PROJECT DESCRIPTION

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SCHEDULE 5 OPCO STEP-IN AGREEMENT

TRANSMISSION FUNDING AGREEMENT

THIS TRANSMISSION FUNDING AGREEMENT is signed the 29th day of November, 2013.

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner Labrador-Island Link General Partner Corporation (the "**Partnership**")

– and –

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor ("**Opco**")

– and –

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor ("**NLH**")

WHEREAS:

- A. the Parties wish to ensure the development and improvement of the Bulk Electric System in order to provide safe, reliable and efficient electric service in NL in a prompt and cost effective manner;
- B. the LIL is integral to NLH's planned purchase and delivery of Energy and Capacity from the MF Plant, will allow NLH to rely upon the MF Plant as a secure Energy supply serving NL Customers and will enable the closure of the Holyrood oil-fired generation plant;
- C. the LIL will also provide NLH with the ability to (i) maximize the efficiency of its generation resources and the NL Transmission System in order to meet anticipated demand in NL, and (ii) meet NLH's Energy sale and delivery obligations under related commercial arrangements;
- D. the direct cost reimbursement for the LIL by NLH will provide certainty in cost recovery for the purposes of the Financing of the LIL and will facilitate the design, engineering, construction, Commissioning, Financing, operation and maintenance of the LIL in a prompt and cost-effective manner;
- E. pursuant to the LIL Assets Agreement and the LIL Lease, the Partnership shall provide Opco with all rights necessary to enable Opco to operate and maintain the LIL following the Commissioning Date, and Opco shall operate or cause to be operated the LIL consistently with the provisions of the LIL Lease and this Agreement; and

F. under the provisions of this Agreement, NLH will pay to Opco the TFA Payments, which amounts will pay for the Operating and Maintenance Costs and the Rent;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants 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:

“**Acquiror**” has the meaning set forth in the Opco Step-In Agreement;

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

“**Actual Annual TFA Payment**” has the meaning set forth in **Section 3.3(d)**;

“**Actual Demobilization List Costs**” means the actual costs incurred to complete the work on all Demobilization List Items;

“**Actual Punch List Costs**” means the actual costs incurred to complete the work on all Punch List Items;

“**Actual Quarterly TFA Payment**” has the meaning set forth in **Section 3.3(b)**;

“**Actual Quarterly TFA Payment Invoice**” has the meaning set forth in **Section 3.3(b)**;

“**Actual Quarterly Rent Invoice**” has the meaning set forth in the LIL Lease;

“**Adequacy**” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria and taking into account scheduled and unscheduled outages of system elements;

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person;

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

“**Annual Depreciation on the LIL**” has the meaning set forth in the LIL LP Agreement;

“**Annual Depreciation on Sustaining Costs**” means, in any Operating Year, the Undepreciated Sustaining Costs divided by the remaining Service Life of the LIL, averaged as appropriate consistent with the then current regulatory practice in NL;

“Annual Maintenance Plan” means an annual maintenance plan for the LIL prepared by Opco and Approved by the JOC setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, and containing such other information as may be required by the JOC, acting reasonably;

“Annual O&M Budget” means the annual budget for O&M Activities related to the LIL prepared by Opco for an Operating Year based on the Annual Maintenance Plan for such Operating Year and the O&M Budget, and including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“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;

“Approved by the JOC” means approved by a decision of the JOC made in accordance with Article 3 of the JOA, and **“Approves”**, **“Approved”** and **“Approval”** in relation to the JOC have correlative meanings;

“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;

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 KV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

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

“CFLCo” means Churchill Falls (Labrador) Corporation, Limited, a corporation incorporated pursuant to the laws of Canada, and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River, in the vicinity of Churchill Falls, NL;

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

“Capital Account” has the meaning set forth in the LIL LP Agreement;

“Claiming Party” has the meaning set forth in **Section 8.2(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;

“Collateral Agent” means the Toronto Dominion Bank, in its capacity as collateral agent under the Financing Documents, and includes any successor thereof in such capacity;

“Commissioning” means the testing activities required to demonstrate the LIL is ready to transmit Energy and Capacity in accordance with the LIL Project Description, and **“Commission”** and **“Commissioned”** have a correlative meaning;

“Commissioning Date” means the date on which all of the following has occurred:

- (a) the Commissioning has been completed;
- (b) the NLSO has accepted in writing that the Commissioning has been completed; and
- (c) the Financing Parties have accepted in writing that the Commissioning has been completed.

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and

- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contains or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“**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 a correlative meaning);

“**DER**” means the Debt for Borrowed Money of the Partnership compared to the value of the Capital Accounts of the Partnership, expressed as a ratio;

“**Debt for Borrowed Money**”, with respect to any Person means, without duplication, such Person’s:

- (a) obligations for borrowed money;
- (b) obligations under letters of credit or letters of guarantee or obligations to financial institutions who issued such letters of credit or letters of guarantee for the account of such Person;
- (c) obligations under banker's acceptances, depository bills or depository notes (as these latter two expressions are defined in the *Depository Bills and Notes Act* (Canada));
- (d) Purchase Money Obligations;
- (e) obligations evidenced by bonds, debentures or promissory notes; and
- (f) obligations under guarantees with respect to obligations referred to in **Sections (a)** through **(e)** of this definition inclusively;

“**Demobilization List Cost Deficiency**” has the meaning set forth in the LIL Assets Agreement;

“**Demobilization List Cost Estimate**” has the meaning set forth in the LIL Assets Agreement;

“**Demobilization List Cost Surplus**” has the meaning set forth in the LIL Assets Agreement;

“**Demobilization List Items**” has the meaning set forth in the LIL Assets Agreement;

“Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the LIL in accordance with the LIL Project Description, and to Commission the LIL, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, the products of such activities and undertakings, and the resolution of all Claims and disputes related thereto;

“Direct Claim” has the meaning set forth in **Section 11.4(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of such other Party;

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

“Dispute Resolution Procedure” has the meaning set forth in **Section 8.1(a)**;

“Distributions” has the meaning set forth in the LIL LP Agreement;

“Effective Date” means the Commissioning Date;

“Emera” means Emera Inc., a company incorporated pursuant to the laws of NS, and includes its successors;

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

“Estimated Annual Rent” has the meaning set forth in the LIL Lease;

“Estimated Annual Rent Notice” has the meaning set forth in the LIL Lease;

“Estimated Monthly TFA Payment” has the meaning set forth in **Section 3.2(c)**;

“Estimated TFA Payment” has the meaning set forth in **Section 3.2(c)**;

“Estimated TFA Payment Invoice” has the meaning set forth in **Section 3.2(c)**;

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

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

financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance or Refinance the Development Activities;

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements, and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

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

“Fiscal Year” has the meaning set forth in the LIL LP Agreement;

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control and without fault or negligence of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or inadvertent action or failure to act causing material physical damage to, or materially impairing the operation of, or access to the MF Plant, the LIL, the LTA or the NL Transmission System, or any machinery or equipment comprising part of, or used in connection with the MF Plant, the LIL, the LTA or the NL Transmission System;
- (e) a revocation, amendment, failure to renew or other inability to obtain or the revocation, failure to renew or other inability to maintain in force any order, permit,

licence, certificate or authorization from any Authorized Authority that is required with respect to the O&M Activities, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the party seeking or holding such order, permit, licence, certificate or authorization;

- (f) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of Energy or Capacity that is required by the NLSO for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices; and
- (g) any event or circumstance affecting an O&M Contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that such O&M Contractor is relieved from the performance of its obligations under a contract affecting a Party;

but none of the following shall be a Force Majeure:

- (h) lack of finances or changes in economic circumstances of a Party;
- (i) if the event relied upon results from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (j) any delay in the settlement of any Dispute;

“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;

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

“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;

“**HSE**” means health, safety and the environment;

“**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);

“**Holder**” means “holder” as defined in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

“**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)**;

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

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

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

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

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

“JOA” means the Joint Operations Agreement between Nalcor and Emera dated July 31, 2012, relating, among other things, to the operation and maintenance of the LIL;

“JOC” means the Joint Operations Committee established pursuant to the JOA;

“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;

“LIL” means equipment and facilities comprising a HVdc transmission line and all related components, including converter stations, synchronous condensers, and terminal, telecommunications and switchyard equipment, constructed between the LTA and the Island Interconnected System including:

- (a) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent;

- (b) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission lines; and
- (c) all mechanical, electrical and other systems and other technology installed under or upon any of the foregoing;

“LIL LP Agreement” means the agreement between Labrador-Island Link General Partner Corporation, as general partner, and Labrador-Island Link Holding Corporation, as limited partner, dated July 31, 2012, which establishes the Partnership;

“LIL Assets Agreement” means the agreement of even date herewith between the Partnership and Opco relating, among other things, to the lease, assignment and licence, as applicable, of the LIL Assets and Rights by the Partnership to Opco, and the assumption by Opco of the operation and maintenance of the LIL;

“LIL Assets and Rights” has the meaning set forth in the LIL Lease;

“LIL Lease” means the agreement of even date herewith between the Partnership and Opco (and NLH for certain limited purposes) by which the LIL Assets and Rights are leased, assigned or licenced, as applicable, by the Partnership to Opco;

“LIL Lease Term” has the meaning set forth in the LIL Lease;

“LIL Project Description” means a compilation of the fundamental engineering criteria, data and components on the basis of which the LIL is to be constructed as set forth in **Schedule 1**;

“LIL Remedies Agreement” means the agreement of even date herewith among the Partnership, Opco and NLH setting forth certain specific remedies associated with this Agreement and the LIL Lease;

“LTA” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant and the LIL;

“LTAMP” means a long term asset management plan describing and quantifying the O&M Activities for each Operating Year in sufficient detail to determine the estimated annual Operating and Maintenance Costs and Sustaining Costs, and including:

- (a) a description of each activity, including at a minimum routine annual O&M Activities, anticipated Sustaining Activities, and retirements which do not occur annually;
- (b) the expected year of occurrence of each such activity; and
- (c) estimates of the annual costs applicable to each such activity;

“Labrador Transco” means Labrador Transmission Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

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

“Loan Guarantee” means the Federal Loan Guarantee for the LIL given by Canada as part of the Financing;

“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;

“MF Plant” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be owned and operated by Muskrat;

“MPPA” means the Multi-Party Pooling Agreement to be entered into between the NLSO and the owners or operators of transmission facilities comprising the NL Transmission System pursuant to which the NLSO shall exercise operational control of, and provide transmission service over, the NL Transmission System;

“MW” means megawatt;

“MWh” means MW hour;

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

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

“Muskrat” means Muskrat Falls Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“NL” means the Province of Newfoundland and Labrador;

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

“NL Customers” means the wholesale and retail customers of electricity throughout NL directly or indirectly connected to the NL Transmission System;

“NL Transmission System” means electricity transmission assets in NL with a voltage level greater than or equal to 230 KV to be pooled under the MPPA;

“NLH” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**NLH Default**” has the meaning set forth in **Section 10.3**;

“**NLH Indemnified Party**” has the meaning set forth in **Section 11.1(a)**;

“**NLSO**” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH responsible for the safe and reliable operation of the Bulk Electric System or a functionally separate division of NLH performing this function, and includes any of its successors;

“**NS**” means the Province of Nova Scotia;

“**Nalcor**” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“**Nalcor LP**” means Labrador-Island Link Holding Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**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;

“**Notice**” means a communication required or contemplated to be given by a Party to another Party under this Agreement, which communication shall be given in accordance with **Section 16.1**;

“**O&M Activities**” means all activities and undertakings performed by or on behalf of Opco after the Commissioning Date that are required to operate, maintain and sustain the LIL in accordance with Good Utility Practice, including administration and the replacement or overhaul of major components which do not extend the Service Life and, for greater certainty, includes Sustaining Activities;

“**O&M Budget**” means the budget prepared by Opco for the LIL based on the LTAMP and setting forth the Operating and Maintenance Costs and Sustaining Costs required to be made for each Operating Year during the LIL Lease Term, including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“**O&M Contract**” means a contract to perform work or provide services, equipment, materials, facilities or supplies forming part of or procured in connection with O&M Activities;

“**O&M Contractor**” means a Person who enters into an O&M Contract;

“O&M Standards” means the standards or requirements established or adopted and Approved by the JOC for the operation and maintenance of the LIL in accordance with Good Utility Practice for a long-term, low cost, reliable transmission facility, including monitoring and reporting on asset performance, frequency and scope of major inspections, applicable industry standards to apply in asset operation and maintenance, completion of the LTAMP, and the maintenance of appropriate critical spares, and includes standards or criteria established by the Standards Authority which are applicable to the LIL;

“Opco” has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Opco Affiliate Assignee” means an Affiliate of Opco to which all of the Opco Rights are assigned in accordance with the provisions of this Agreement;

“Opco Default” has the meaning set forth in **Section 10.1**;

“Opco Indemnified Party” has the meaning set forth in **Section 11.2(a)**;

“Opco Rights” has the meaning set forth in **Section 14.1(a)**;

“Opco Step-In Agreement” has the meaning set forth in **Section 16.14**;

“Operating and Maintenance Costs” means, without duplication, all costs and expenses incurred for operation and maintenance of the LIL in accordance with the LIL Lease after the Commissioning Date, including costs of O&M Activities which are not Sustaining Activities, administration costs for Opco, any Taxes payable by or on behalf of Opco or in respect of amounts payable to Opco (including for greater certainty, any Taxes payable by Opco and required to be withheld by a Person on the payment of an amount to Opco), net of any such Taxes which are recovered, but grossed up and adjusted to the extent necessary so that the amount of any amounts payable to Opco which are retained by Opco, net of any such Taxes, shall equal the amount which Opco would have retained if such Taxes were not payable by or on behalf of Opco or in respect of amounts payable to Opco, any costs and expenditures related to insurance, including any deductibles, any amount payable on account of a penalty imposed by Applicable Law or contract, any amount payable on account of a judgment rendered against Opco, and expressly excluding in all instances Rent and any costs, expenses or other amounts included in Rent;

“Operation and Maintenance Manual” means a document or collection of documents describing the LIL Project Description and each of the major components of the LIL, the design engineer’s recommendation for operating procedures and parameters, routine preventative maintenance, HSE procedures and periodic inspections, and containing references to each original equipment manufacturers manual for operating and maintenance of their provided equipment, spare parts requirements, and special tools and equipment;

“Operating Year” means (a) a calendar year during the TFA Term, except that the first operating year will commence on the Commissioning Date and end on December 31 of the

calendar year in which such date occurs, and the last operating year will end on the date of termination or expiry of the TFA Term, or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

"PUB" means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

"Paid in Full" means in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment to such Person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors' rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

"Parties" means the Partnership, Opco and NLH, and **"Party"** means one of them;

"Partners" has the meaning set forth in the LIL LP Agreement;

"Partnership" has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

"Partnership Affiliate Assignee" means an Affiliate of the Partnership to which all of the Partnership Rights are assigned in accordance with the provisions of this Agreement;

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

"Partnership Indemnified Party" has the meaning set forth in **Section 11.3(a)**;

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

"Partnership Step-In Agreement" has the meaning set forth in **Section 16.14**;

"Permits" means permits, licences, Regulatory Approvals and permissions held by the Partnership in connection with Development Activities or otherwise held by the Partnership or Opco in connection with an activity or undertaking involving the LIL or any part of it but, for greater certainty, excluding LIL Real Property Rights;

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

"Prime Rate" means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of

Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

“**Punch List Cost Deficiency**” has the meaning set forth in the LIL Assets Agreement;

“**Punch List Cost Estimate**” has the meaning set forth in the LIL Assets Agreement;

“**Punch List Cost Surplus**” has the meaning set forth in the LIL Assets Agreement;

“**Punch List Items**” has the meaning set forth in the LIL Assets Agreement;

“**Purchase Money Obligations**” means, with respect to any Person, any indebtedness assumed as part of, or issued or incurred in respect of, the cost of acquisition, including by way of conditional sales contract or leasing by way of a capital lease, of any property (including shares of capital stock) or of the cost of construction, improvement or extension of any property acquired, constructed, improved or extended or leased by way of a capital lease, which indebtedness existed at the time of acquisition, construction, improvement or extension or was created, issued, incurred, assumed or guaranteed contemporaneously with the acquisition, construction, improvement or extension or leasing by way of a capital lease or within 90 days after the completion thereof, and includes any extension, renewal or refinancing of any such indebtedness if the amount thereof outstanding on the date of such extension, renewal or refinancing is not increased, it being expressly understood that Purchase Money Obligations shall not include any trade payables incurred in the ordinary course of business and for the purpose of carrying on same or any indebtedness incurred in connection with any sale and leaseback transaction;

“**Qualified Assignee**” means a Person which is:

- (a) an administrative or security agent of a Financing Party;
- (b) with respect to the Opco Rights, an Affiliate or Affiliates of Opco, or a Holder, provided
 - (i) Opco and such Affiliate(s) or Opco and such Holder, as applicable, enter into an agreement with the Partnership and NLH substantially in the form of **Schedule 2**; and
 - (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of the LIL Lease, the MPPA, the LIL Remedies Agreement, this Agreement and all of Opco’s right, title and interest in the LIL Assets and Rights; and
- (c) with respect to the Partnership Rights, an Affiliate or Affiliates of the Partnership, or a Holder, provided
 - (i) the Partnership and such Affiliate(s) or the Partnership and such Holder, as applicable, enter into an agreement with Opco and NLH substantially in the form of **Schedule 2**; and

- (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of the LIL Lease, the MPPA, the LIL Remedies Agreement, this Agreement and all of the Partnership's right, title and interest in the LIL Assets and Rights;

"Qualified Partner" has the meaning set forth in the LIL LP Agreement;

"Quarter" means a calendar quarter (or portion thereof, as applicable) in an Operating Year;

"RROE" has the meaning set forth in the LIL LP Agreement, and as determined in accordance with **Section 3.9**;

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

"Recipient Party" has the meaning set forth in **Section 8.2(a)**;

"Refinance" means to extend, renew or refinance any indebtedness where the amount of such indebtedness outstanding on the date of such extension, renewal or refinancing is not increased;

"Regular Business Hours" means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

"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;

"Reliability" means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security;

"Reliability Standards" means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

"Rent" means for each Operating Year, an annual amount equal to:

- (a) applicable operating expenses to administer the Partnership calculated on an annual basis; plus
- (b) Annual Depreciation on the LIL (prorated if necessary); plus
- (c) Annual Depreciation on Sustaining Costs (prorated if necessary); plus
- (d) the Tax Adjustment Amount calculated on an annual basis; plus
- (e) any Taxes payable by the Partnership (excluding any Taxes which are or will be included in the Tax Adjustment Amount but including, for greater certainty, any Taxes payable by the Partnership and required to be withheld by Opco on the payment of Rent), grossed up to the extent necessary so that the amount of Rent

retained by the Partnership, net of any such Taxes, shall equal the amount of the Rent the Partnership would have retained if such Taxes were not payable by the Partnership; plus

- (f) annual return on the Undepreciated Capital Asset and the Undepreciated Sustaining Costs,
 - (i) calculated as a percentage, that is equal to:
 - (A) the actual annual cost of the debt owed by the Partnership as a percentage, being interest expense divided by the debt principal value, averaged as appropriate; plus
 - (B) the RROE applicable from time to time, averaged as appropriate and subject to a minimum value to achieve the debt service coverage ratio agreed in the Financing Documents;both weighted according to the DER; multiplied by
 - (ii) the sum of the Undepreciated Capital Asset plus Undepreciated Sustaining Costs; plus
- (g) annual recovery of cost of capital (without duplication) associated with Reserves as determined by the GP or required by a Restrictive Agreement; plus
- (h) without duplication, any amount payable by the Partnership arising from an indemnity obligation under the Financing Documents; plus
- (i) without duplication, any amount payable by Opco arising from an indemnity obligation under the Financing Documents,

all averaged as appropriate consistent with the then current regulatory practice in NL;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

“Reserves” has the meaning set forth in the LIL LP Agreement;

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

“Retired Limited Partner” has the meaning set forth in the LIL LP Agreement;

“Return on Equity” has the meaning set forth in the LIL LP Agreement;

“Security” means the ability of an electrical system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

“Service Life” means the period of time immediately following the Commissioning Date, as designated by an Authorized Authority, from time to time, during which the LIL can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LIL Project Description;

“Standards Authority” means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the LIL;

“Sustaining Activities” means, with respect to O&M Activities, those activities and undertakings of a capital nature which Opco determines after the Commissioning Date are necessary to sustain the LIL in proper operating condition during its Service Life;

“Sustaining Costs” means the costs incurred as a result of Sustaining Activities, including an allowance for funds used during construction consistent with the then current regulatory practice in NL;

“TFA Payments” has the meaning set forth in **Section 3.1**;

“TFA Term” has the meaning set forth in **Section 9.1**;

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

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

“Tax Adjustment Amount” has the meaning set forth in the LIL LP Agreement;

“Third Party Claim” has the meaning set forth in **Section 11.4(b)**;

“Undepreciated Capital Asset” has the meaning set forth in the LIL LP Agreement;

“Undepreciated Sustaining Costs” means, in any Operating Year, the accumulated Sustaining Costs at the end of such Operating Year plus Reserves associated with Sustaining Costs less accumulated Annual Depreciation on Sustaining Costs; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of

contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**”, “**Section**”, “**Schedule**” or “**Appendix**” followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (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 GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement 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 Effective Date, 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 set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “**approved**”, “**decided**” or “**determined**” by a Party or requires a Party’s or its Representative’s “**consent**”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.
- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 8**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Effectiveness of Agreement

Notwithstanding the execution of this Agreement by the Parties, the provisions of this Agreement shall only become effective on the Effective Date.

1.6 Schedules

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

Schedule 1 - LIL Project Description

Schedule 2 - Form of Assignment

Schedule 3 - Dispute Resolution Procedure

Schedule 4 - Confidential Information

Schedule 5 - Opco Step-In Agreement

**ARTICLE 2
PURPOSE**

2.1 Purpose

The purpose of this Agreement is to establish a mechanism by which NLH shall pay to Opco the TFA Payments during the TFA Term as consideration for:

- (a) Opco's commitment to:
 - (i) enter into the LIL Assets Agreement, the LIL Lease, the LIL Remedies Agreement and the MPPA; and

- (ii) operate and maintain the LIL following the Commissioning Date in accordance with the provisions of this Agreement, the LIL Lease and the MPPA; and
- (b) the Partnership's commitment to:
 - (i) design, engineer, construct, Commission and obtain and service the Financing for the LIL in a timely manner;
 - (ii) enter into the LIL Assets Agreement, the LIL Lease, the LIL Remedies Agreement and the MPPA;
 - (iii) interconnect the LIL with the LTA and with the existing transmission facilities of NLH, each in accordance with Good Utility Practice and applicable interconnection procedures; and
 - (iv) pay all Sustaining Costs.

**ARTICLE 3
TFA PAYMENTS**

3.1 NLH Obligation to Make TFA Payments

NLH agrees, as of and from the Commissioning Date and at all times thereafter during the TFA Term, to pay to Opco in accordance with the provisions of this Agreement (a) Operating and Maintenance Costs, (b) Rent, and (c) \$30,000 per Operating Year (collectively the "TFA Payments"). NLH also agrees to pay to Opco in accordance with the provisions of this Agreement a Punch List Cost Deficiency and a Demobilization List Cost Deficiency.

3.2 TFA Payments Information

- (a) Rent - Opco shall deliver to NLH within two Business Days after receipt from the Partnership each and every Estimated Annual Rent Notice and revised Estimated Annual Rent Notice.
- (b) Operating and Maintenance Costs - Opco shall:
 - (i) not later than 18 months prior to the anticipated Commissioning Date (as set forth in the then current master project schedule for the Development Activities) deliver to NLH the O&M Budget;
 - (ii) not later than 120 days prior to the commencement of an Operating Year deliver to NLH the Annual O&M Budget;
 - (iii) within 30 days of receipt of any information which would increase or decrease the Annual O&M Budget by \$1,000,000 or more, deliver to NLH a revised Annual O&M Budget; and

- (iv) deliver the budget information as set forth in this **Section 3.2(b)** in sufficient detail for NLH to plan for cost recovery.

- (c) TFA Payments - Opco shall not later than 18 months prior to the anticipated Commissioning Date (and thereafter not later than 120 days prior to the commencement of each Operating Year) deliver to NLH a Notice (the “**Estimated TFA Payment Invoice**”) setting out Opco’s estimate of the Operating and Maintenance Costs, the amount of Rent and the \$30,000 (or portion thereof) payable to Opco, in each case, for the following Operating Year (the “**Estimated TFA Payment**”). The Estimated TFA Payment Invoice shall set out the monthly payment due for each calendar month (or part thereof) in the applicable Operating Year (the “**Estimated Monthly TFA Payment**”).

3.3 Payment

- (a) Estimated TFA Payment - NLH shall pay the first Estimated Monthly TFA Payment to Opco on the Commissioning Date and thereafter shall pay the Estimated Monthly TFA Payment to Opco monthly in advance on the first Business Day of each and every calendar month during the TFA Term.

- (b) Actual TFA Payment - Within 15 days after the end of each Quarter or partial Quarter during which Estimated Monthly TFA Payments have been paid by NLH to Opco, Opco shall deliver to NLH a Notice (the “**Actual Quarterly TFA Payment Invoice**”) setting out the actual TFA Payments payable for the previous Quarter (the “**Actual Quarterly TFA Payment**”). The Actual Quarterly TFA Payment Invoice shall contain a copy of the Actual Quarterly Rent Invoice received by Opco from the Partnership pursuant to the LIL Lease, a summary of the Operating and Maintenance Costs paid during the applicable Quarter, and such other detail and supporting documentation as reasonably required by NLH to review the calculation of the Actual Quarterly TFA Payment.

- (c) Quarterly Adjustment - Should the Actual Quarterly TFA Payment exceed the sum of the Estimated Monthly TFA Payments paid during the applicable Quarter, NLH shall pay to Opco within 10 days of receipt by NLH of the Actual Quarterly TFA Payment Invoice the amount by which the Actual Quarterly TFA Payments exceed the sum of the Estimated Monthly TFA Payments paid for the applicable Quarter. Should the Actual Quarterly TFA Payments be less than the sum of the Estimated Monthly TFA Payments paid by NLH for the applicable Quarter, Opco shall within 10 days of delivery by Opco of the Actual Quarterly TFA Payment Invoice either (i) pay to NLH the amount by which the sum of the Estimated Monthly TFA Payments paid for the applicable Quarter exceeds the Actual Quarterly TFA Payments, or (ii) deliver to NLH a Notice authorizing NLH to credit against future Estimated Monthly TFA Payments, the amount by which the sum of the Estimated Monthly TFA Payments paid for the applicable Quarter exceeds the Actual Quarterly TFA Payment.

- (d) Annual Adjustment - Within 30 days after the final determination of the Tax Adjustment Amount for the prior Operating Year, Opco shall deliver to NLH a Notice

setting out the actual amount of the TFA Payment (“**Actual Annual TFA Payment**”) which was required to be paid by NLH to Opco for the prior Operating Year, addressing in detail and with supporting documentation, any discrepancies from the total sum of Actual Quarterly TFA Payments paid by NLH over such Operating Year. The amount (whether positive or negative) by which the Actual Annual TFA Payment differs from the total sum of the Actual Quarterly TFA Payments paid for such Operating Year shall be adjusted between Opco and NLH such that, if the Actual Annual TFA Payment is more than the total sum of the Actual Quarterly TFA Payments paid for the Operating Year, NLH shall within 10 days of delivery by Opco of the applicable Notice pay the difference to Opco, and if the Actual Annual TFA Payment is less than the total sum of the Actual Quarterly TFA Payments paid for the Operating Year, Opco shall within 10 days of delivery by Opco of the applicable Notice either (i) pay the difference to NLH, or (ii) deliver to NLH a Notice authorizing NLH to credit the difference against future Estimated Monthly TFA Payments.

- (e) Further Adjustments - After the annual adjustment is made pursuant to **Section 3.3(d)**, should a Party discover or obtain written evidence of an overpayment or an underpayment of TFA Payments for a previous Operating Year, such Party shall forthwith provide Notice of the overpayment or underpayment and the supporting documentation in its possession to the other Party. On verification of the overpayment or underpayment by the other Party or, if applicable, pursuant to the Dispute Resolution Procedure, the payment of funds to address such overpayment or underpayment shall be made by the applicable Party within 10 days.

3.4 Changes to Timing of Payment

The Parties agree to exchange information and, if necessary, to adjust the timing of payment of TFA Payments as provided for in this Agreement to enable the timing of Estimated Monthly TFA Payments to align as closely as is reasonably possible to the timing of payments required under the Financing Documents.

3.5 Nature of NLH’s Obligation to Pay

Notwithstanding any other provision of this Agreement, including **Section 10.8**, until such time as the Financing is Paid in Full, NLH’s obligation to pay the TFA Payments, a Punch List Cost Deficiency and a Demobilization List Cost Deficiency shall be absolute, unconditional and irrevocable, and shall not be subject to any reductions under any circumstances whatsoever (except for the crediting permitted under **Sections 3.3(c)** and **(d)**, **3.7(a)(ii)** and **3.7(b)(ii)**).

3.6 Interest on Overdue Amounts

- (a) NLH - If NLH fails to pay on the due date any amount payable to Opco pursuant to this Agreement, including the adjustment provisions set forth in **Sections 3.3(c)**, **(d)** and **(e)**, NLH shall pay interest to Opco on such unpaid amount from the due date or, as the case may be, the date of demand to the date of actual payment (after as

well as before judgment) at a rate equal to the default rate of interest set forth in the Financing Documents.

- (b) Opco - If Opc

3.7 Commissioning Adjustments

- (a) Punch List Items - On receiving notice from Opc

 - (i) of a Punch List Cost Deficiency, NLH shall include the amount of such deficiency in the Estimated Monthly TFA Payment for the calendar month immediately following the calendar month in which such notice was received; or
 - (ii) of a Punch List Item Surplus, NLH shall reduce, by the amount of such surplus, the Operating and Maintenance Costs portion of the Estimated Monthly TFA Payment for the calendar month immediately following the calendar month in which such notice was received. If the Punch List Cost Surplus is greater than the Operating and Maintenance Costs portion of the Estimated Monthly TFA Payment of the applicable month, the remaining portion of the Punch List Cost Surplus shall be offset against subsequent Estimated Monthly TFA Payments until it has been applied in full.

- (b) Demobilization List Items - On receiving notice from Opc

 - (i) of a Demobilization List Cost Deficiency, NLH shall include the amount of such deficiency in the Estimated Monthly TFA Payment for the calendar month immediately following the calendar month in which such notice was received; or
 - (ii) of a Demobilization List Cost Surplus, NLH shall reduce, by the amount of such surplus, the Operating and Maintenance Costs portion of the Estimated Monthly TFA Payment for the calendar month immediately following the calendar month in which such notice was received. If the Demobilization List Cost Surplus is greater than the Operating and Maintenance Costs portion of the Estimated Monthly TFA Payment of the applicable month, the remaining portion of the Demobilization List Cost Surplus shall be offset against subsequent Estimated Monthly TFA Payments until it has been applied in full.

3.8 **Notice of TFA Payment to the NLSO**

Forthwith on receiving any payments from NLH pursuant to the provisions of this Agreement, Opco shall provide written notice of receipt to the NLSO in order for the NLSO to account for such payments through credits against NLH's payment obligations arising under any transmission service agreements to which NLH may be a party.

3.9 **RROE**

- (a) The RROE to be earned by the Partnership in respect of any Fiscal Year shall be determined in accordance with the following principles and shall be changed whenever a reference rate of return is made effective by the PUB or other Authorized Authority, with the prior reference rate of return applying during the part of the Fiscal Year before the change and the new reference rate of return applying during the portion of the Fiscal Year after the change:
 - (i) if during such Fiscal Year there is only one privately-owned regulated electrical utility in NL, the RROE shall be equal to the rate of after tax-return on equity approved by the PUB in respect of such utility for such Fiscal Year; and
 - (ii) if during such Fiscal Year there is more than one privately-owned regulated electrical utility in NL, the RROE shall be the average of the rates of after-tax return on equity approved by the PUB in respect of all such utilities for such Fiscal Year.

- (b) If during such Fiscal Year there are no privately-owned regulated electrical utilities in NL, the RROE shall be the average of the rate of after-tax return on equity approved for such Fiscal Year for the four largest (measured by asset base), privately-owned regulated electrical utilities in Canada (but excluding both Nalcor and Emera and their Affiliates), provided that if there are fewer than four such utilities, the average referred to above shall be the average of all such utilities.

3.10 **Opco Indemnity Obligations under the Financing Documents**

In the event that the Rent portion of TFA Payments are increased due to there being any amount payable by Opco arising from an indemnity obligation under the Financing Documents, as contemplated by **Section (i)** of the definition of Rent in **Section 1.1**, then such amount shall be paid directly to the Collateral Agent immediately upon receipt by Opco.

ARTICLE 4
OTHER OBLIGATIONS

4.1 **General Covenants of Opco**

As of and from the Commissioning Date, Opco covenants and agrees to:

- (a) provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations under this Agreement, including professional engineers and procurement, project management and operating and maintenance personnel;
- (b) obtain and maintain in good standing all Regulatory Approvals required for the O&M Activities;
- (c) pay Rent to the Partnership; and
- (d) complete and pay for the Punch List Items and the Demobilization List Items in accordance with the provisions of the LIL Assets Agreement.

4.2 Operations and Maintenance Covenants

As of and from the Commissioning Date, Opco covenants and agrees to keep the LIL in a good and reasonable state of repair consistent with Good Utility Practice and to that end, Opco shall:

- (a) perform, or cause to be performed, all O&M Activities in accordance with the O&M Standards and this Agreement;
- (b) ensure that all O&M Activities are conducted pursuant to the Annual Maintenance Plan, with only those variations as are necessary and appropriate for the operation and maintenance of the LIL in accordance with Good Utility Practice;
- (c) in the conduct of all O&M Activities, considering the remaining Service Life:
 - (i) apply methods and practices customarily applied by experienced utility operators in other similar circumstances;
 - (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
 - (iii) comply with all regulatory requirements of all Authorized Authorities; and
 - (iv) comply with Good Utility Practice;
- (d) comply with all Applicable Law (including rules governing the operation of the NL Transmission System to the extent applicable), Reliability Standards, as required by all Authorized Authorities in NL, and relevant Regulatory Approvals;
- (e) comply with all operating and maintenance requirements applicable to the LIL under the MPPA;
- (f) maintain and keep updated the Operation and Maintenance Manual;

- (g) prepare the O&M Budget and an Annual O&M Budget;
- (h) not do or suffer any waste or damage to the LIL (other than reasonable wear and tear), nor permit operation of the LIL outside the design parameters of the LIL;
- (i) enter or cause to be entered into O&M Contracts as are reasonably necessary to carry out the O&M Activities;
- (j) perform or cause to be performed the O&M Activities in a manner that is in compliance with all Applicable Law pertaining to HSE and that is designed to avoid material adverse impacts on the safety or health of people, property and the environment; and
- (k) prepare, and provide updates and revisions to, the LTAMP.

4.3 Ancillary Agreements

Opco shall enter into the LIL Lease, and assume and perform certain of the obligations of the Partnership in:

- (a) the interconnection agreement for the LIL and the LTA between the Partnership and Labrador-Transco;
- (b) the interconnection agreement for the LIL and the transmission facilities of NLH between the Partnership and NLH; and
- (c) the MPPA.

ARTICLE 5 **INFORMATION, ACCESS AND REPORTING**

5.1 Records and Audits

Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the TFA Term shall be maintained for the TFA Term; all other documents shall be retained for the longer of (a) any period prescribed by Applicable Law, and (b) at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Parties 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 Parties to comply with their respective obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Each Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for in this Agreement. Each Party shall be responsible for the costs of its own access and

verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

5.2 Access to the LIL

Each Party shall have the right, from the Effective Date through to the date which is one year after end of the TFA Term, upon reasonable advance Notice to the other Parties, to access the LIL for the sole purpose of examining the LIL or the conduct of the O&M Activities in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the LIL and shall not compromise the safety of persons or property. While accessing the LIL, the Parties and their Representatives shall follow all rules and procedures established for visitors to the site which are related, but not limited, to safety and security. The inspection of the LIL or the exercise of any audit rights or the failure to inspect the LIL or to exercise audit rights by or on behalf of a Party shall not relieve another Party of any of its obligations under this Agreement. No Opco Default, NLH Default or Partnership Default will be waived or deemed to have been waived solely by any inspection by or on behalf of a Party. In no event will any inspection by a Party hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

5.3 Communications with Authorized Authorities

Each Party, with respect to the LIL, shall, upon request by another Party, provide such other Party with copies of all communications and correspondence to and from Authorized Authorities.

**ARTICLE 6
RESERVATION**

6.1 Control of LIL

The Parties hereby agree and acknowledge that NLH's absolute, unconditional and irrevocable agreement to directly pay Opco the TFA Payments under this Agreement does not grant NLH any control over the operation of the LIL or any right to receive transmission service offered over the LIL by virtue of this Agreement. Notwithstanding the foregoing, the Parties acknowledge that the LIL shall be integrated into the NL Transmission System and NLH shall acquire any transmission service rights over the LIL through the execution of transmission service agreements with the NLSO.

**ARTICLE 7
TAXES**

7.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in

respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.

- (b) Governmental Charges - Subject to **Section 7.1(c)**,
- (i) if Opco is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder, Opco shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse Opco for such Taxes to the extent not so offset;
 - (ii) if Opco is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, Opco shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership under this Agreement, and the Partnership shall promptly reimburse Opco for such Taxes to the extent not so offset;
 - (iii) if NLH is required by Applicable Law to remit or pay Taxes which are Opco's responsibility hereunder, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to Opco under this Agreement, and Opco shall promptly reimburse NLH for such Taxes to the extent not so offset;
 - (iv) if NLH is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership under this Agreement, and the Partnership shall promptly reimburse NLH for such Taxes to the extent not so offset;
 - (v) if the Partnership is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse the Partnership for such Taxes to the extent not so offset;
 - (vi) if the Partnership is required by Applicable Law to remit or pay Taxes which are Opco's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to Opco under this Agreement, and Opco shall promptly reimburse the Partnership for such Taxes to the extent not so offset; and
 - (vii) 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 7.1(a)** and **7.1(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 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;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to another 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 from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 7.3**; and
 - (iv) if one Party incurs an expense as agent for another 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 such other Party to claim, and shall cooperate with such other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 7.1(b)** and **7.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) NLH is solely responsible for the payment of income taxes and HST payable by NLH;
 - (ii) Opco is solely responsible for the payment of income taxes and HST payable by Opco; and
 - (iii) the Partnership is solely responsible for the payment of income taxes and HST payable by the Partnership.

7.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 7.2(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.

7.3 Invoicing Tax Requirement

All invoices, as applicable, issued pursuant to **Article 3** 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.

7.4 Payment and Offset

- (a) Subject to **Section 7.4(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, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

7.5 HST Registration Status and Residency

- (a) Opco represents and warrants that it is registered for purposes of the HST and that its registration number is 8394 61779 RT0001, and undertakes to advise NLH and the Partnership of any change in its HST registration status or number.
- (b) NLH represents and warrants that it is registered for purposes of the HST and that its registration number is 1213 94928 RT0001, and undertakes to advise Opco and the Partnership of any change in its HST registration status or number.
- (c) The Partnership represents and warrants that it is registered for purposes of the HST and that its registration number is 8063 71100 RT0001, and undertakes to advise Opco and NLH of any change in its HST registration status or number.

- (d) Opco represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise NLH and the Partnership of any change in its residency status.
- (e) NLH represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Opco and the Partnership of any change in its residency status.
- (f) The Partnership represents and warrants that it is a Canadian partnership for the purposes of the Income Tax Act, and undertakes to advise Opco and NLH of any change in its status as a Canadian partnership.

7.6 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 a Party is not 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).

7.7 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 Parties, in writing, the following additional information for the purposes of assisting the other Parties 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 another Party advises the Party, in writing, is relevant to a determination by such 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 7.7**, each Party undertakes to advise the other Parties, in a timely manner, of any material changes to the matters described in **Sections 7.7(a)** through **7.7(c)**.

7.8 **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 another Party to an Authorized Authority without the prior written consent of such other Party.

7.9 **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 Laws, 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 another 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 another Party, a Party shall deliver to such other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of such other Party.

7.10 **Tax Indemnity**

Each Party (in this **Section 7.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Parties from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 7** 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 7.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Parties harmless from and against:

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

7.11 **Additional Tax Indemnity**

If one Party (in this **Section 7.11** 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 Parties, and to indemnify and save harmless the other Parties 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 7.11** referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by another Party to the First Party, provided that:

- (a) any such amount payable by such other Party pursuant to this **Section 7.11** shall be reduced by the amount of such Taxes, if any, which such 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 7.11** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by such other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on such other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

7.12 **Assignment**

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been authorized in accordance with this Agreement, 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 Parties 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 Parties of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Section 7.12** and **Article 14**.

ARTICLE 8
DISPUTE RESOLUTION

8.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 3** (the “**Dispute Resolution Procedure**”).

- (b) Disputed Payment - Notwithstanding any other provision of this Agreement, if the amount or timing of any payment is disputed by a Party, the Party liable to pay shall make the payment in full on the date such payment is required, prior to initiating any Dispute Resolution Procedure relating thereto. The Parties further agree that any payment to be received by it from another Party as a result of a Dispute Resolution Procedure shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents.
- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 8**, without prejudice to their rights pursuant to this Agreement.
- (d) Directions under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

8.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against another Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly give the Recipient Party Notice 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 of the Claiming Party to promptly give Notice.
- (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.

ARTICLE 9
TERM AND TERMINATION

9.1 **TFA Term**

The term of this Agreement (the “**TFA Term**”) shall commence on the Effective Date and shall terminate in accordance with **Section 9.2**. For greater certainty, the Parties hereby acknowledge and agree that NLH shall have no obligation to make any payment of any amount under this Agreement until the Commissioning Date.

9.2 **Termination**

This Agreement shall terminate on the first to occur of:

- (a) the date which is five years after the date on which the Financing is Paid in Full;
- (b) the date which is 15 years following the date on which the Loan Guarantee is released or expires, as applicable;
- (c) such date as may be provided pursuant to the LIL Remedies Agreement; and
- (d) subject to the approval of the Financing Parties, the date set forth in a written agreement of the Parties to terminate.

9.3 **Effect of Termination**

- (a) **Obligations on Termination** - When this Agreement terminates:
 - (i) each Party shall promptly return to the other Parties, as applicable, all Confidential Information of the other Parties in the possession of such Party, and destroy any internal documents that contain any Confidential Information of the other Parties (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law which shall continue to be held in accordance with the provisions of **Section 13.1**); and
 - (ii) a Party shall not have any obligation to the other Parties in relation to this Agreement or the termination hereof, except as set out in this **Section 9.3**.
- (b) **Survival** - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
 - (i) the final settlement of all accounts between the Parties;
 - (ii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;

- (iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement;
- (iv) information and access as set forth in **Sections 5.1** and **5.2**; and
- (v) any other obligations that survive pursuant to **Section 16.13**.

**ARTICLE 10
DEFAULT AND REMEDIES**

10.1 Opco Events of Default

The occurrence of one or more of the following events shall constitute a default by Opco under this Agreement (an “**Opco Default**”):

- (a) Opco 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 five days after the receipt of Notice from NLH or the Partnership that such amount is due and owing;
- (b) Opco is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)** and **10.1(f)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Opco of Notice thereof from NLH or the Partnership, unless the cure reasonably requires a longer period of time and Opco is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NLH and the Partnership, as applicable;
- (c) any representation or warranty made by Opco in this Agreement is false or misleading in any material respect;
- (d) Opco 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 Opco;
- (f) the Partnership is in default or in breach of Section 3.10 of the LIL Lease; or
- (g) Opco is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation by the Partnership or Opco arising from an indemnity obligation set forth in the Financing Documents.

10.2 NLH and the Partnership Remedies upon an Opco Default

- (a) General - Upon the occurrence of an Opco Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement or the LIL Remedies Agreement as being the sole and exclusive right, remedy or recourse:

- (i) NLH and the Partnership, as applicable, shall be entitled to exercise all or any of their respective rights, remedies or recourse available to them under this Agreement, the LIL Remedies Agreement or otherwise available at law or in equity; and
- (ii) the rights, remedies and recourse available to NLH and the Partnership are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to this **Section 10.2** and **Article 12**, NLH and the Partnership, as applicable, may recover all Losses suffered by them that result from an Opco 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 NLH or the Partnership, as applicable, to recover any amounts owed to them by Opco under this Agreement.

10.3 **NLH Events of Default**

The occurrence of one or more of the following events shall constitute a default by NLH under this Agreement (a “**NLH Default**”):

- (a) NLH 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 five days after the receipt of Notice from Opco or the Partnership that such amount is due and owing;
- (b) NLH is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NLH of Notice thereof from Opco or the Partnership, unless the cure reasonably requires a longer period of time and NLH is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Opco and the Partnership, as applicable;
- (c) any representation or warranty made by NLH in this Agreement is false or misleading in any material respect;
- (d) NLH 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; or
- (e) any Insolvency Event occurs with respect to NLH.

10.4 **Opco and the Partnership Remedies upon a NLH Default**

- (a) General - Upon the occurrence of a NLH Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement or the LIL Remedies Agreement as being the sole and exclusive right, remedy or recourse:
- (i) Opco and the Partnership shall be entitled to exercise all or any of their respective rights, remedies or recourse available to them under this Agreement, the LIL Remedies Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Opco and the Partnership are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to this **Section 10.4** and **Article 12**, Opco and the Partnership may recover all Losses suffered by them that result from a NLH 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 Opco or the Partnership, as applicable, to recover any amounts owed to them by NLH under this Agreement, provided however, in no circumstances other than as set forth in the LIL Remedies Agreement shall NLH be required to pay the net present value of the Rent portion of the TFA Payments to be paid pursuant to the provisions of this Agreement.

10.5 **Partnership Events of Default**

The occurrence of one or more of the following events shall constitute a default by the Partnership under this Agreement (a “**Partnership Default**”):

- (a) the Partnership fails to pay or advance any amount to be paid or advanced under the LIL Lease at the time and in the manner required by the LIL Lease which failure is not cured within five days after the receipt of Notice from NLH or Opco that such amount is due and owing;
- (b) the Partnership is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.5(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by the Partnership of Notice thereof from NLH or Opco, unless the cure reasonably requires a longer period of time and the Partnership is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NLH and Opco, as applicable;
- (c) any representation or warranty made by the Partnership in this Agreement is false or misleading in any material respect;

- (d) the Partnership 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 the Partnership; or
- (f) the Partnership is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation by the Partnership or Opco arising from an indemnity obligation set forth in the Financing Documents.

10.6 NLH and Opco Remedies upon a Partnership Default

- (a) General - Upon the occurrence of a Partnership Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement or the LIL Remedies Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) NLH and Opco shall be entitled to exercise all or any of their respective rights, remedies or recourse available to them under this Agreement, the LIL Remedies Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to NLH and Opco 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 this **Section 10.6** and **Article 12**, NLH and Opco may recover all Losses suffered by them that result from a Partnership 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 NLH or Opco, as applicable, to recover any amounts owed to them by the Partnership under this Agreement.

10.7 Equitable Relief

Prior to the Financing being Paid in Full, no Party shall have any right, remedy or recourse to terminate this Agreement for any reason without the consent of the Financing Parties. Subject to the foregoing sentence, nothing else in this **Article 10** will limit or prevent a Party from seeking equitable relief, including specific performance or a declaration to enforce another Party's obligations under this Agreement.

10.8 Force Majeure

Other than an obligation to pay or spend money including **Section 3.1**, in the event that a Party is delayed, hindered or prevented from the performance of any act required by this Agreement by reason of Force Majeure, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such Force Majeure.

10.9 **Conflicts or Inconsistency**

If there is any conflict or inconsistency between this **Article 10** and the LIL Remedies Agreement, the LIL Remedies Agreement shall prevail.

ARTICLE 11
LIABILITY AND INDEMNITY

11.1 **NLH Indemnity**

- (a) NLH shall indemnify, defend, reimburse, release and save harmless Opco, the Partnership, the GP, their respective Representatives, and each of their successors and permitted assigns (each such Person, a “**NLH Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any NLH Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) any inaccuracy or breach of any representation or warranty made by NLH in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of NLH in this Agreement or any document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of NLH occurring in connection with, incidental to or resulting from NLH's obligations under this Agreement or any document or instrument delivered pursuant to this Agreement;
 - (iv) subject to the provisions of the Remedies Agreement, any failure by NLH to duly and punctually pay in full all amounts claimed under any invoice as and when provided under **Section 3.3** or any other amounts payable by NLH under the terms hereof; or
 - (v) any loss of any right of any NLH Indemnified Party against NLH in respect of any amounts payable by NLH hereunder for any reason whatsoever, including by operation of any bankruptcy, insolvency or similar such laws, any laws affecting creditors' rights generally or general principles of equity.
- (b) Notwithstanding the foregoing, NLH shall have no obligation to indemnify, defend, reimburse, release or save harmless any NLH Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such NLH Indemnified Party.

11.2 Opco Indemnity

- (a) Opco shall indemnify, defend, reimburse, release and save harmless NLH, the Partnership, the GP, their respective Representatives, and each of their successors and permitted assigns (each such Person, an “**Opco Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Opco Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) any inaccuracy or breach of any representation or warranty made by Opco in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of Opco in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of Opco occurring in connection with, incidental to or resulting from Opco’s obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.
- (b) Notwithstanding the foregoing, Opco shall have no obligation to indemnify, defend, reimburse, release or save harmless any Opco Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Opco Indemnified Party.

11.3 Partnership Indemnity

- (a) The Partnership shall indemnify, defend, reimburse, release and save harmless NLH and Opco, their respective Representatives, and each of their successors and permitted assigns (each such Person, a “**Partnership Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Partnership Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) any inaccuracy or breach of any representation or warranty made by the Partnership in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of the Partnership in this Agreement or any document or instrument delivered pursuant to this Agreement; or

- (iii) any gross negligence, wilful misconduct or fraud by or on behalf of the Partnership occurring in connection with, incidental to or resulting from the Partnership's obligations under this Agreement or any document or instrument delivered pursuant to this Agreement;
- (b) Notwithstanding the foregoing, the Partnership shall have no obligation to indemnify, defend, reimburse, release or save harmless any Partnership Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Partnership Indemnified Party.

11.4 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Parties and the other Persons as set forth in **Sections 11.1, 11.2 and 11.3**, as applicable, (each, 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. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"). The failure to promptly give the Indemnitor Notice 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 of the Indemnified Party to promptly give Notice.
- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor 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 Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor 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 Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified 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.
- (d) 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.

- (e) 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 this **Section 11.4**.
- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of 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.

- (g) 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.
- (h) 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.
- (i) 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 the Indemnitor and an Indemnified Party, and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (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 participate in the defense of 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 **Limitations and Indemnities Effective Regardless of Cause of Damages**

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 11** and **Article 12** of this Agreement shall apply to any and all Claims.

12.2 **No Consequential Loss**

Notwithstanding any other provision of this Agreement, in no event shall a Party be liable to another Party 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 Party with respect to matters relating to the LIL, in favour of a third party, shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 12.2**. For the purposes of this **Section 12.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

12.3 **Insurance Proceeds**

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to:

- (a) any insurance proceeds received or entitled to be received in relation to the Claim; and
- (b) 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.

12.4 **Net Present Value**

Except as set forth in the LIL Remedies Agreement,

- (a) in no event shall NLH be required to pay the net present value of the Rent portion of the TFA Payment due to be paid by NLH to Opco pursuant to the terms of this Agreement; and
- (b) to the extent that the Rent portion of the TFA Payment at any time funds debt service of the Partnership only such portion of debt services shall be so funded as constitutes interest, fees and the instalment of principal which are due or about to become due as at such time. Any accelerated amount of principal is expressly excluded.

**ARTICLE 13
CONFIDENTIALITY**

13.1 Obligations of Confidentiality

The provisions of **Schedule 4** shall apply to Confidential Information.

13.2 Disclosure of Agreement

Each Party hereby agrees to the other Parties 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 Opco Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Section 14.1(d)**, Opco shall not assign its interest or rights under this Agreement, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Opco Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the Opco Rights by Opco unless such assignment includes all of the Opco Rights and Opco obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Opco Rights.
- (c) Change of Control - A change of Control of an Opco Affiliate Assignee that would result in such Opco Affiliate Assignee no longer being an Affiliate of Opco will be deemed to be an assignment of Opco Rights in contravention of this **Section 14.1**.
- (d) Consent Requirement - An assignment of the Opco Rights to a Person other than an Affiliate of Opco, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of NLH and the Partnership.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.1** will be null and void.

14.2 Partnership Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Section 14.2(d)**, the Partnership shall not assign its interest or rights under this Agreement, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Partnership Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the Partnership Rights by the Partnership unless such assignment includes all of the Partnership Rights and

the Partnership obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Partnership Rights.

- (c) Change of Control - A change of Control of a Partnership Affiliate Assignee that would result in such Partnership Affiliate Assignee no longer being an Affiliate of the Partnership will be deemed to be an assignment of the Partnership Rights in contravention of this **Section 14.2**.
- (d) Consent Requirement - An assignment of the Partnership Rights to a Person other than an Affiliate of the Partnership, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of Opco and NLH.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.2** will be null and void.

14.3 **NLH Assignment Rights**

- (a) General - NLH shall not assign this Agreement, its interests or rights hereunder, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing.
- (b) Non-Permitted Assignment - Any purported assignment in contravention of this **Section 14.3** will be null and void.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 **Opco Representations and Warranties**

Date: Opco represents and warrants to NLH and the Partnership that, as of the Effective

- (a) it is duly organized and validly existing under the laws of NL and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement and the LIL Remedies Agreement;
- (b) the execution, delivery and performance of this Agreement and the LIL Remedies Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Opco 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) each one of this Agreement and the LIL Remedies Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy,

insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement or the LIL Remedies 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 Opco for Opco's lawful execution, delivery and performance of this Agreement and the LIL Remedies 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 Opco's ability to perform its obligations under this Agreement or the LIL Remedies Agreement, and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or the LIL Remedies Agreement.

15.2 NLH Representations and Warranties

Date: NLH represents and warrants to Opco and the Partnership that, as of the Effective

- (a) it is duly created and validly existing under the laws of NL and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement and the LIL Remedies Agreement;
- (b) the execution, delivery and performance of this Agreement and the LIL Remedies Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of NLH 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) each one of this Agreement and the LIL Remedies Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement or the LIL Remedies 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 NLH for NLH's lawful execution, delivery and performance of this Agreement and the LIL Remedies 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 NLH's ability to perform its obligations under this Agreement or the LIL Remedies Agreement, and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or the LIL Remedies Agreement.

15.3 Partnership Representations and Warranties

Date: The Partnership represents and warrants to Opco and NLH that, as of the Effective

- (a) it is a limited partnership duly organized, validly existing and in good standing under the laws of NL;
- (b) the GP is duly organized, validly existing and in good standing under the laws of NL;
- (c) the execution, delivery and performance of this Agreement and the LIL Remedies Agreement are within its powers, have been duly authorized by all necessary action on the part of the GP and the Partnership 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;
- (d) each one of this Agreement and the LIL Remedies Agreement has been duly executed and delivered on its behalf by the GP and constitutes a 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;
- (e) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

- (f) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement or the LIL Remedies Agreement;
- (g) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by the Partnership for the Partnership's lawful execution, delivery and performance of this Agreement and the LIL Remedies 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 the Partnership's ability to perform its obligations under this Agreement or the LIL Remedies Agreement, and (iii) the Regulatory Approvals; and
- (h) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or the LIL Remedies Agreement.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.1 **Notices**

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

- (a) to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL
A1B 0M5
Attention: Corporate Secretary
Fax: (709) 737-1782

- (b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL
A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

(d) to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.
500 Columbus Drive
P.O. Box 13000, Station A
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

(e) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted 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. Each Party may change its address or fax number hereunder from time to time by giving Notice of such change to each of the other Parties.

16.2 **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.

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 a Party without the prior approval of the other Parties. The foregoing shall not apply to (a) disclosure of this Agreement pursuant to **Section 13.2**, and (b) any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with each of the other Parties before making any such announcement and gives due consideration to the views of each of the other Parties with respect thereto. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

16.6 **Relationship of the Parties**

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship with another Party. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of another Party for any purpose nor to permit a Party to enter into agreements or incur any obligations for or on behalf of another 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 and execute 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 all of the Parties. Until such time as the Financing is Paid in Full, without the written consent of the Collateral Trustee no amendment may be made to:

- (a) The definitions in **Section 1.1** (i) of “Acquiror”, “Collateral Trustee”, “Commissioning Date”, “Financing”, “Financing Documents”, “Financing Parties”, “Force Majeure”, “Paid in Full”, “Qualified Assignee”, “Rent” and “TFA Payments”; or (ii) that are used in a definition referred to in **Section 16.10(a)(i)**;
- (b) **Sections 16.10** or **16.14**; or
- (c) **Articles 3, 6, 9, 10, 11, 12** or **14**.

16.11 **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 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 such Party 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**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties arising out of this Agreement. 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 **Step-In Agreements**

On the written request of a Financing Party, the Parties shall execute and deliver the step-in agreements in the form attached as **Schedule 5** (the “**Opco Step-In Agreement**”) and Schedule 5 to the LIL Assets Agreement (the “**Partnership Step-In Agreement**”), as applicable.

16.15 **Waiver of Sovereign Immunity**

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) 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.

16.16 **Successors and Assigns**

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


16.17 **Affiliates of Nalcor**


Notwithstanding any other provision of this Agreement, the NL Crown shall be deemed to not be an Affiliate of Nalcor, Opco, NLH, the Partnership, the GP or Nalcor LP.

[The remainder of this page is intentionally left blank.]

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

**LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION**


By: 
Name: Gilbert Bennett
Title: Vice President

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

LABRADOR-ISLAND LINK OPERATING CORPORATION

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

By: 
Name: Robert Hull
Title: GM (Commercial & Financing) & CRO

We have authority to bind the corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: 
Name: Robert Henderson
Title: VP, Newfoundland and Labrador Hyd.

By: 
Name: Paul Humphries
Title:

We have authority to bind the corporation.

TRANSMISSION FUNDING AGREEMENT

SCHEDULE 1

LIL PROJECT DESCRIPTION

SCHEDULE 1
LIL PROJECT DESCRIPTION

Section 1 Labrador - Island Link (LIL)

Overall HVdc system consists of a 900 MW HVdc Island Link between Labrador and Newfoundland.

Section 2 Construction Power

The following power supply sources will be used for construction power:

- Muskrat Falls: A 25 kV tap from the construction power system for the Muskrat Falls Generating Facility (see Construction Power)
- Forteau Point: A 25 kV tap from an existing distribution system located approximately 2.5 km away.
- Shoal Cove: A 25 kV tap from an existing distribution system located approximately 700m away.
- L'Anse Au Diable: A 14.4 kV tap from an existing distribution system located approximately 400 m away.
- Dowden's Point: A 14.4 kV tap from an existing distribution system located approximately 1.5 km away.
- Soldiers Pond: A 25 kV tap from an existing distribution system located approximately 4 km away.

Section 3 Construction Telecommunication Systems - Labrador-Island Link

Provision of telecommunications services and infrastructure during the construction phase to the end of the Project along the 315 kV HVac and the ± 350 kV HVdc transmission lines and associated construction camps, including the CF Extension Switchyard construction camp.

- Services along the transmission line rights-of-way
- Land Mobile Radio System (LMRS)
- Services available at the various remote campsites
- Data (corporate and personal)
- Telephony (corporate and personal)
- Network Management System (NMS)
- Closed Circuit Television (CCTV) and
- Security and Access Control System (SACS)

Section 4 Labrador Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- Situated on the south side of the Churchill River on a level fenced site.

- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 5 Electrode Line - Labrador

- An *electrode line* carrying two conductors with the first 370 km to be supported on the HVdc lattice steel towers from Muskrat Falls to Forteau Point and the remaining section from Forteau Point to L'Anse au Diable to be supported on a wood pole line.
- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 6 Electrode Labrador

- A shoreline pond *electrode* to be located at L'Anse au Diable on the Labrador side of the SOBI.
- Nominal monopolar rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.

Section 7 Labrador - Island Overland HVdc Transmission

- An HVdc overhead transmission line, ± 350 kV bi-pole, to connect the Muskrat Falls *Converter Station* to the Labrador Transition Compound at the Strait of Belle Isle and then to connect the Northern Peninsula Transition Compound at the Strait of Belle Isle to the Soldiers Pond *Converter Station*.
- Transmission line to carry both poles (single conductor per pole) and one OPGW. The Labrador section is to carry two *electrode* conductors from the Muskrat Falls *Converter Station* to Forteau Point (see 6310 Electrode Line - Labrador).
- The HVdc transmission line is to have a designed nominal power capacity of 900 MW; however, given the mono-polar operation criteria, each pole is to have a nominal rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- *Counterpoise* installed from station-to-station.
- Towers are to be galvanized lattice steel, with self-supported angles and dead ends, and guyed suspension towers.
- 50 year *Reliability Level Return Period* of loads, with respect to Nalcor Energy operating experience and LCP specific modeling and test programs.

Section 8 Transition Compound - Labrador

- Situated on a level fenced site at Forteau Point.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Overhead line to cable transition equipment.

- High-speed switching, control, protection, monitoring and communication equipment.

Section 9 Marine Crossing - SOBI - General

- ± 350 kV, 900 MW submarine cable system to transmit power across the SOBI in bipolar mode for 50-year design life, with capabilities to allow configuration in monopolar mode.
- Each cable to have a nominal rating of 1286 A (one pu per pole) and a transient rating of 2572 A (two pu per pole) for five minutes in mono-pole mode.
- Consists of three *mass impregnated* submarine cables and associated components, inclusive of one spare submarine cable.
- Land cables shall connect submarine cables to cable termination system within the transition compound.
- The route for the submarine cable(s) crossing shall be designed to meet the transmission, protection, reliability, and design life requirements, and give consideration to technical and economic optimization.
- Cables shall be adequately protected along the entire length of the crossing as required. Cable protection methodology will employ proven technologies only, and may include rock placement, trenching, horizontal directional drilling (HDD) and concrete mattresses.
- Where discrete protection application is required, protection measures shall be designed to meet the transmission and reliability requirements.

Section 10 Transition Compound - Northern Peninsula

- Situated on a level fenced site at Shoal Cove.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Cable to overhead line transition equipment.
- High-speed switching, control, protection, monitoring and communication equipment.

Section 11 Soldiers Pond Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.
- Situated next to the Soldiers Pond switchyard on the Avalon Peninsula on a level fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 12 Electrode Line - Newfoundland East

- An *electrode line* carrying two conductors generally follows the existing transmission ROW from Soldiers Pond to Conception Bay.
- Wood pole construction.

- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 13 Electrode Newfoundland East

- A shoreline pond *electrode* to be located at Dowden's Point on the east side of Conception Bay.
- Nominal rating of 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.

Section 14 Soldiers Pond Switchyard

- Situated on the north-east side of Soldiers Pond on a level, fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Electrical layout of the switchyard is to be in accordance with the proposed SLD.
- Switchyard to interconnect six 230 kV HVac transmission lines (three existing transmission lines looped in), the synchronous condensers and the Soldiers Pond *Converter Station*.

Section 15 Island System Upgrades East

- Three 175 MVAR high-inertia synchronous condensers at Soldiers Pond.
- 230 kV circuit breaker replacements including Holyrood, B1B11, B1L17, B12L17, B2B11, B2L42, B12L42, B2L18, B3B13 and B12B15 and Bay d'Espoir B4B5.
- 66 kV circuit breaker replacements including Hardwoods B7T1, B7T5 and B7B8 230 kV and 138 kV circuit breaker replacements.
- Replacement of conductors, 230 kV transmission line - Bay d'Espoir to Sunnyside.
- Splitting and Re-termination of three existing 230 kV transmission lines (TL201, TL217 and TL242) into the new Soldier's Pond Terminal Station forming six 230 kV line terminations. This requires construction of 6 x 1.6 km of 230 kV transmission line complete with overhead ground wire to provide lightning protection for the six new transmission line terminations.
- Upgrade of the protection and control systems at Hardwoods, Oxen Pond, Holyrood and Western Avalon Terminal Stations.

Section 16 Operations Telecommunications System - Island Link

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers.
- OTN Layer shall be the telecommunications backbone and utilize the OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN Layer equipment nodes shall be designed based upon the least total cost of ownership alternative.
- Convergence Layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the Access Layer subsystems for transmission on the OTN.

- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance.

The Island Transmission Link Telecommunication Assets specifically includes the following.

- HVdc OPGW fibre optics connecting
 - Muskrat Falls *Converter Station* to Forteau Point Transition Compound
 - Shoal Cove Transition Compound to Soldiers Pond *Converter Station*
- ADSS fibre optics connecting
 - Forteau Point Transition Compound to the L'Anse au Diable *Electrode*
 - Soldiers Pond *Converter Station* to Dowden's Point *Electrode*
- Fibre optic infrastructure shall also be used to connect
 - Forteau Point Transition Compound to Shoal Cove Transition Compound by optic fibres embedded in each power cable being installed across the SOBI
 - Soldiers Pond *Converter Station* to the NLH Energy Control Centre (ECC) in St. John's
 - Soldiers Pond *Converter Station* to the NLH Backup Control Centre (BCC)
- OTN Layer optical-electronics associated with the above referenced HVdc OPGW fibre optic interconnections.
- Convergence and Access Layers telecommunication systems associated with all of the above referenced fibre optic interconnections, except these telecommunication layers at MF.
- NLH ECC and BCC SCADA system upgrades

TRANSMISSION FUNDING AGREEMENT

SCHEDULE 2

FORM OF ASSIGNMENT

**SCHEDULE 2
FORM OF ASSIGNMENT**

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ASSIGNMENT OF TRANSMISSION FUNDING AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the ● day of ●, 20__.

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of Newfoundland and Labrador, by its general partner, Labrador-Island Link General Partner Corporation (the "**Partnership**")

- and -

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated under the laws of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor ("**Opc**")

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act 2007* (Newfoundland and Labrador), and a wholly-owned subsidiary of Nalcor ("**NLH**")

- and -

<@>, a [type of entity and jurisdiction or statute of incorporation or formation], [*insert basis on which assignee is permitted*] (the "**Assignee**")

WHEREAS:

- A. Opc, NLH and the Partnership entered into the Transmission Funding Agreement on [], 201 (the "**TFA**"); and
- B. Opc, NLH and the Partnership entered into the LIL Remedies Agreement on 201__ (the "**LRA**" and together with the TFA, the "**Assigned Agreements**");

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 Agreements” has the meaning set forth in the recitals;

“Assignee” means [*] an Affiliate of **[Opco/the Partnership] [or a Holder]**, a Qualified Assignee of the Assignor;

“Assigned Rights” means the Assigned Agreements and the **[Opco Rights][Partnership Rights]**;

“Assignor” means the **[Partnership/Opco or an Affiliate of the Partnership/Opco, 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;

“Consenting Parties” means **[Opco/the Partnership, of if applicable as a result of prior assignments, specified Affiliates]** and NLH;

“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**” means []; [NTD: Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmission assets and contracts transferred to it the Effective Date is to be the date when all of those transfers are effective.]

“**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;

“LRA” has the meaning set forth in the recitals;

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“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**;

“**Opco**” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“**Opco Rights**” has the meaning set forth in the TFA;

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

“**Partnership**” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“**Partnership Rights**” has the meaning set forth in the TFA;

“**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;

“**Qualified Assignee**” has the meaning set forth in the TFA;

“**Regular Business Hours**” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“**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;

“**TFA**” has the meaning set forth in the recitals; 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 a Qualified Assignee

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 Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights as of the Effective Date and covenants and agrees with the Assignor and the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Rights. 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 Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of Assigned Rights

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the Assigned Rights. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor are in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights subject to the terms and conditions herein, and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Section 14.1(d) or 14.2(d) of the TFA, as applicable, does not require consent to assignment.

2.5 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 2.5(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 2.7**.

2.6 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.6(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.

2.7 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.

2.8 Payment and Offset

- (a) Subject to **Section 2.8(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.

2.9 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 ●.

**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 Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary 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**][**Qualified Assignee**] of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

ARTICLE 4
DISPUTE RESOLUTION PROCEDURE

4.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 3 to the TFA (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:

- (a) To Assignor:
 [•]
- (b) To Assignee:
 [•]
- (c) To Consenting Parties:
 [•]

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 Assigned 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.

[The 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][the general partner; the general partner has authority to bind the Assignor].

[ASSIGNEE]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Assignee].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Partnership].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Partnership].

TRANSMISSION FUNDING AGREEMENT

SCHEDULE 3

DISPUTE RESOLUTION PROCEDURE

**SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE**

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SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE

Section 1 Interpretation

1.1 Definitions

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

“**Agreement**” means the agreement to which this Schedule is attached;

“**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)(i)**;

“**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 Parties” has the meaning set forth in **Section 5.1(a)(i)**;

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

“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 by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

“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 Agreement.

2.3 Interim Measures

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

2.4 Mediator or Arbitrator as Witness

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

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by any Party requesting a review under this **Section 3** by Notice to the other Parties (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 no 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 any 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 forth 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) a Party gives Notice to the other Parties 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 no 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) a Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Parties (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, any Party may elect, by giving notice thereof to the other Parties, 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 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 any other agreement to which they are all parties, 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 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

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

Section 6 **Expert Determination Procedure**

6.1 **Referral for Expert Determination**

A Party (the “**Referring Party**”) may by Notice to another 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 the Agreement, 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 forth 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 Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

TRANSMISSION FUNDING AGREEMENT

APPENDIX A

TO

DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

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.

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

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- (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 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 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

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.

TRANSMISSION FUNDING AGREEMENT

SCHEDULE 4

CONFIDENTIAL INFORMATION

**SCHEDULE 4
CONFIDENTIAL INFORMATION**

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SCHEDULE 4
CONFIDENTIAL INFORMATION

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

“Agreement” means the agreement to which this Schedule is attached;

“ATIPPA” means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

“Authorized Purpose” means a purpose associated with the rights and obligations set forth in the Agreement;

“ECA” means the *Energy Corporation Act* (Newfoundland and Labrador);

“Lender Recipient” has the meaning set forth in **Section 2.3**;

“Representatives” means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

“Schedule” means this **Schedule 4 - Confidential Information**;

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

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

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

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

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the TFA Term (the “**Term**”), provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

- (a) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this Schedule or other obligation of confidentiality;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;

- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

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

Section 3 Acknowledgments

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

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

Section 4 Disclosures Required By Law

4.1 Opco and its Affiliates, NLH and its Affiliates and the Partnership and its Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. Each of the Parties acknowledge that the other Parties and their respective Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 The Parties hereby acknowledge and agree that the Confidential Information disclosed by another Party is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to the other Parties, as applicable. It is further acknowledged and agreed that each Party has represented to the other Parties that the Confidential Information disclosed is treated consistently in a confidential manner by each of them and is customarily not provided to their competitors. Therefore, the Parties shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure, and be entitled to be represented and make arguments in support of non-disclosure.

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

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;
- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including **Section 4.3**, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Parties and their Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding among the Parties or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

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

TRANSMISSION FUNDING AGREEMENT

SCHEDULE 5

OPCO STEP-IN AGREEMENT

**SCHEDULE 5
OPCO STEP-IN AGREEMENT**

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STEP-IN AGREEMENT

THIS STEP-IN AGREEMENT is made effective the ___ day of _____, 2013 (the “**Effective Date**”).

BETWEEN:

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor (“**Opco**”)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as collateral trustee under the deed of trust and mortgage dated [●], (such deed of trust and mortgage, as changed and in effect from time to time, the “**Collateral Trust Deed**”), for and on behalf of the Senior Secured Bondholders (as defined therein) (the “**Security Trustee**”)

- and -

TORONTO DOMINION BANK, in its capacity as collateral agent under the collateral agency agreement dated [●], executed in its favour by, *inter alia*, Opco (as changed and in effect from time to time, the “**Collateral Agency Agreement**”), for and on behalf of the GAA Finance Parties (as defined therein) (the “**Collateral Agent**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the Statutes of Newfoundland and Labrador, 2007, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

- and -

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner **LABRADOR-ISLAND LINK GENERAL PARTNER CORPORATION** (the “**Partnership**”)

(each one of NLH and the Partnership shall be referred to as a “**Contracting Party**” and collectively as the “**Contracting Parties**”)

WHEREAS:

- A. Opco has entered into the LIL Assets Agreement made as of [●] with the Partnership (such agreement, as changed and in effect from time to time, any provisions thereof and/or the rights of Opco therein (as the context requires and/or so admits) collectively the “**LIL Assets Agreement**”);
- B. Opco has entered into the LIL Lease made as of [●] with the Partnership (and NLH for certain limited purposes) (such agreement, as changed and in effect from time to time, any provisions thereof and/or the rights of Opco therein (as the context requires and/or so admits) collectively the “**LIL Lease**”);
- C. Opco has entered into the Transmission Funding Agreement made as of [●] with the Contracting Parties (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of Opco therein (as the context requires and/or so admits) collectively, the “**TFA**”);
- D. Opco has entered into the LIL Remedies Agreement made as of [●] with the Contracting Parties (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of Opco therein (as the context requires and/or so admits) collectively the “**LRA**” and together with the LIL Assets Agreement, the LIL Lease and the TFA, the “**Contracts**”); and
- E. Pursuant to the Collateral Trust Deed and various other security documents, the Security Trustee has been or will be granted Liens in all of the assets and rights of Opco, including the Contracts (collectively, the “**Security Interests**”).

NOW THEREFORE in consideration of the premises and the agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. Definitions

The words and expressions (capitalized or not), wherever used in this Agreement, or in any agreement supplemental or ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings ascribed thereto.

(a) General Definitions - Unless the context otherwise requires, in this Agreement:

“**Account Holder**” has the meaning set forth in the Collateral Trust Deed;

“**Acquiror**” has the meaning set forth in **Section 5(a)(v)**;

“**Agent Party**” has the meaning set forth in **Section 5(a)(iv)**;

“**Business Day**” means any day excluding Saturday, Sunday or any other day which in the City of St. John’s, Newfoundland and Labrador, is a legal holiday or a day on which banks are authorized by Law or by local proclamation to close;

“**Canada**” means Her Majesty the Queen in Right of Canada;

“**Collateral Agency Agreement**” has the meaning set forth at the commencement hereof;

“**Collateral Agent**” has the meaning set forth at the commencement hereof;

“**Collateral Trust Deed**” has the meaning set forth at the commencement hereof;

“**Consent**” has the meaning set forth in **Section 5(b)**;

“**Contracts**” has the meaning set forth in **Recital D**;

“**Contracting Party**” and “**Contracting Parties**” have the meanings set forth at the commencement hereof;

“**Default Notice**” has the meaning set forth in **Section 5(a)(iv)**;

“**Enforcing Party**” has the meaning set forth in **Section 5(b)**;

“**Financing Documents**” has the meaning set forth in the TFA;

“**GAA Finance Parties**” has the meaning set forth in the Financing Documents;

“**Law**” means all applicable provisions of laws, ordinances, codes, rules, regulations, orders, orders in council, directives, decrees, administrative orders, guidelines, policies of any governmental entity, as well as the applicable provisions of any treaty and any order and decree of any tribunal and arbitrator after the expiration of any appeal period;

“**Lien**” means (i) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation, (ii) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), including by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms, (iii) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and (iv) any agreement to grant any of the foregoing rights or interests;

“**LIL LP Agreement**” has the meaning set forth in the TFA;

“**LRA**” has the meaning set forth in **Recital D**;

“**NLH**” has the meaning set forth at the commencement hereof;

“**Opco**” has the meaning set forth in the commencement hereof;

“**Opco Revenue Account**” means the account of Opco maintained with the Account Holder and bearing number <*>;

“**Partnership**” has the meaning set forth at the commencement hereof;

“**Qualified Assignee**” has the meaning set forth in the TFA;

“**Secured Obligations**” has the meaning set forth in the Collateral Trust Deed;

“**Security Interests**” has the meaning set forth in **Recital E**;

“**Security Trustee**” has the meaning set forth at the commencement hereof;

“**Senior Secured Bondholders**” has the meaning set forth in the Collateral Trust Deed;

“**Subordinated Security**” means the Opco Security Agreements entered into between Opco and each of NLH and the Partnership substantially in the form attached as Schedule 1 to the LRA, which has been subordinated to the Security Interests by a Subordination Acknowledge in the form of Appendix A thereto; and

“**TFA**” shall have the meaning ascribed thereto in the first preamble paragraph hereof.

(b) Extended Meanings - To the extent the context so admits, in this Agreement the following words and expressions shall be given the extended meanings set forth opposite them:

an “**agreement**” - any agreement, oral or written, simple contract or specialty, bond, bill of exchange, indenture, instrument or undertaking;

“**asset**” - any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset;

a “**breach**” - any breach, default, event of default, or any equivalent or similar event however described under any agreement;

“**cancel**” - cancel, surrender, repudiate, disclaim, terminate or suspend;

“**change**” - change, modify, alter, amend, supplement, restate, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive;

“**claim**” - claim, claim over, cross-claim, counter-claim, defence, demand, liability, proceeding, judgment or order or award of any court, other governmental authority, arbitrator or other alternative dispute resolution authority;

a “**document**” - a written agreement, consent, waiver, certificate, notice or other written document or instrument;

a **“government”** - (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it;

“governmental authority” - any court, administrative tribunal, regulatory authority, government, union of nations or any agency or other authority of a government or union of nations;

“include” - include without limitation, and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters;

“losses and expenses” - losses, costs, expenses, damages, penalties and judgments and awards of any court or other governmental authority, arbitrator, mediator or other alternative dispute resolution authority, including any applicable awarded costs, and legal fees and disbursements on a solicitor and client basis;

“obligations” - indebtedness, obligations, promises, covenants, responsibilities, acts, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“person”** - an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a corporation organized under the laws of any jurisdiction, a government or agency of a government or any other legal or commercial entity;

“proceeding” - any legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding;

“receiver” - a privately appointed or court appointed receiver or receiver and manager, and, except in the definition of “Agent Party”, an interim receiver, liquidator, trustee in bankruptcy, administrator, administrative receiver and any other like or similar official;

a **“registration”** - any notice to or filing, publication, recording or registration with any governmental authority having jurisdiction with respect to any specified person, transaction or event, or any of such person's assets;

“rights” - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities, recourses and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“successor”** of a person (the **“relevant party”**) - (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or

merging body corporates and (ii) any person to whom all or substantially all of the assets of the relevant party are transferred;

“**written**” and “**in writing**” - an original writing, a pdf or facsimile copy of a writing or an email.

2. Representations and Warranties

Each Contracting Party, for itself only, hereby represents, warrants, acknowledges and confirms to the Security Trustee, with the knowledge that the Security Trustee and the Senior Secured Bondholders are relying on such representations, warranties, acknowledgments and confirmations for the purpose of entering into the Collateral Trust Deed and the Financing Documents, that:

- (a) NLH is a corporation and the Partnership is a limited partnership duly and validly existing under the laws of Newfoundland and Labrador and each of them are qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement and the Contracts;
- (b) each Contracting Party has the legal capacity and right to enter into this Agreement and the Contracts and do all acts and things and execute and deliver all documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms and conditions hereof and thereof;
- (c) each Contracting Party has taken all necessary action to authorize the execution and delivery of this Agreement and the Contracts, the creation and performance of its obligations hereunder and thereunder as well as the consummation of the transactions contemplated hereunder and thereunder;
- (d) each Contracting Party has duly executed and delivered this Agreement and the Contracts;
- (e) none of the authorization, execution, delivery or performance of this Agreement or the Contracts by each Contracting Party, nor the consummation of any of the transactions contemplated hereby or thereby:
 - (i) requires any authorization to be obtained or registration to be made (except such as have already been obtained or made and are now in full force and effect and those not yet required);
 - (ii) conflicts with, contravenes or gives rise to any breach under (A) any of the articles (which, in the case of NLH, are the provisions of the *Hydro Corporation Act, 2007* (Newfoundland and Labrador), the *Energy Corporations Act* (Newfoundland and Labrador) or by-laws of either Contracting Party, (B) the provisions of any document or obligation to which

either Contracting Party is a party or by which such Contracting Party or any of its assets are or may become bound or (iii) any Law;

- (iii) has resulted or will result in the creation or imposition of any Lien upon any of the assets of either Contracting Party, other than Liens subordinated to the Security Interests;
- (f) each of this Agreement and each of the Contracts constitutes a valid and legally binding obligation of each Contracting Party enforceable against it in accordance with its terms, subject only to Laws relating to bankruptcy, insolvency, winding-up, dissolution, administration, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion;
- (g) each Contract is in full force and effect and has not been changed and there is no dispute (to the best of its knowledge) thereunder now existing, and after giving effect to the granting of the Security Interests by Opco to the Security Trustee in each Contract, and after giving effect to this Agreement by each Contracting Party, there exists no event or condition which would constitute a breach, or which, with the giving of notice or lapse of time or both, would have constituted a breach under the Contracts;
- (h) each:
 - (i) Contracting Party; and
 - (ii) to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, Opco,is in full compliance in all material respects with and has performed its obligations under the Contracts which are required to be complied with and/or performed to date;
- (i) each Contracting Party has no outstanding claims of a material nature against Opco in respect of the Contracts;
- (j) there are no existing circumstances which could give rise to a material breach by either Contracting Party or, to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, Opco, under either Contract; and
- (k) neither Contracting Party has delivered to or received from Opco, any notice purporting to cancel either Contract.

3. Benefits hereunder independent to those of Opco

Each Contracting Party hereby acknowledges and agrees that the rights of each Agent Party under this Agreement shall be independent to those of Opco under each Contract and may be enforced by such Agent Party independently from Opco.

4. Agent Party not bound to exercise rights

Each Contracting Party hereby acknowledges and agrees that, save as otherwise expressly agreed to in writing, nothing herein contained shall be construed or interpreted as obliging any Agent Party, nor shall any Agent Party be liable for the failure, to exercise any of the rights afforded to it hereunder or under the Collateral Trust Deed. Each Contracting Party hereby further acknowledges and agrees that no Agent Party shall be liable for any loss and expense incurred or suffered by such Contracting Party as a result of any delay by, or any failure of, such Agent Party to exercise any of, the rights afforded to such Agent Party hereunder or under the Collateral Trust Deed.

5. Consent to Liens and Subordination

- (a) In furtherance of the terms and conditions of the Contracts, each Contracting Party hereby expressly:
 - (i) acknowledges and irrevocably consents to the Security Interests granted by Opco in favour of the Security Trustee in the Contracts and any future grant of any Security Interests by Opco in favour of the Security Trustee in the Contracts, and, in connection with any such creation of Security Interests, the filing or registration of any financing statements, registration forms, or any similar documents;
 - (ii) agrees that, save as is otherwise expressly agreed to in writing, no Agent Party shall incur any obligation of Opco or otherwise whatsoever to the Contracting Parties under the terms of the Contracts;
 - (iii) agrees that, save as is otherwise expressly agreed to in writing, any Agent Party shall have the right, but not the obligation, to perform any obligation required of Opco under the Contracts at any time. Nothing herein shall require any Agent Party to cure any breach by Opco of either Contract or to perform such obligation of Opco thereunder;
 - (iv) agrees that upon the Security Interests becoming enforceable, the Security Trustee, or any nominee or designee thereof, or any receiver of Opco or any receiver of the assets of Opco appointed by or on the application of the Security Trustee (the Security Trustee, any such nominee, designate or receiver shall be referred to herein as an “**Agent Party**”) shall, upon written notice (a “**Default Notice**”) to each Contracting Party, and in accordance with its respective interest, be entitled to enforce the Security Interests

against the Contracts, including the right to enforce and enjoy all of the rights that Opco has or may have under the Contracts to the same extent and in the same manner as if it were an original party thereto in the place of Opco. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Agent Party to pay any amounts that may be accrued or past due by Opco under either Contract;

- (v) agrees that whether or not an Agent Party gives a Default Notice, an Agent Party may assign the Contracts to a third party that is a Qualified Assignee subject to the provisions of the Contracts (an “**Acquiror**”). Such an assignment to the Acquiror is conditional upon such Acquiror agreeing to observe and perform all of Opco's obligations under the Contracts arising after the date of such assignment. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Acquiror to pay any amounts that may be accrued or past due by Opco under either Contract;
- (vi) upon any Agent Party completing such an assignment to an Acquiror, each Agent Party shall be released from any and all obligations that such Agent Party may have hereunder to perform the obligations of Opco to the Contracting Parties under the Contracts. Nothing in this Agreement, and neither the giving of a Default Notice nor any assignment pursuant to **Section 5(a)(v)**, releases Opco from its obligations to the Contracting Parties under and in relation to the Contracts;
- (vii) agrees that, except as provided in the LRA, it shall not have any right to cancel or terminate a Contract including in the event of any breach by Opco of such Contract that is particular to Opco and that is not curable by the Security Trustee or any other Agent Party at such time, such as the insolvency, bankruptcy, general assignment for the benefit of creditors or the appointment of a receiver of Opco and that the Contracts shall remain in full force and effect until all Secured Obligations are paid in full;
- (viii) agrees to provide to the Security Trustee or any other Agent Party at such time, at the same time that any notice is provided to Opco of any breach of any Contract or of any proceedings under any Contract, the same notice that it provides to Opco. All notices to any Agent Party shall be in writing and shall be delivered to such Agent Party at the addresses set forth in **Section 18** or any other address confirmed to each Contracting Party from time to time; and
- (ix) subordinates and postpones the payment of all amounts owing to it and security taken with respect to such amounts from time to time by Opco pursuant to the Contracts to the prior and indefeasible payment in full of all Secured Obligations.

- (b) In the event that either NLH or the Partnership (each an “**Enforcing Party**”) takes steps to exercise its rights as subordinated secured creditor pursuant to the Subordinated Security, after having received the written consent of the Collateral Agent (the “**Consent**”), which may only be provided in accordance with the Requisite Instructions (as such term is defined in the Collateral Agency Agreement), such Enforcing Party acknowledges, confirms and agrees that, as a condition to the Consent, whether it is explicitly expressed in the Consent or not, and as a condition to the exercise of such rights under the Subordinated Security, that such Enforcing Party shall have taken such steps and actions as shall be legally required to ensure the continuation, on an enforceable, valid, binding, and unconditional as to continuance, basis, of the obligations and requirements of each of the parties to the Contracts, including explicitly those relating to the construction, operation and maintenance of the LIL and the payment of all payment amounts required to be made under the Contracts such that payments will continue to be made, on the terms and on the basis, as required by the Contracts without interruption, reduction, adjustment, termination or otherwise, and strictly in accordance with the terms of the Contracts. Each Enforcing Party acknowledges and confirms that it is the intention of this provision, and that it is a condition to the Consent, that there be no change to the obligations under the Contracts in the event of any exercise of the security under the Subordinated Security, including no delay to the payments required pursuant to the Contracts, regardless of the legal effect of the exercise of the security, and that all payments shall continue and shall be paid such that they will be received by the Collateral Agent for and on behalf of the GAA Finance Parties and for application in accordance with the terms of the Contracts and the Financing Documents. Each of the parties hereto acknowledges that the Financing Documents, and the guarantees and assurances in relation thereto provided by, inter alia, Canada have been provided based upon the continued requirement for the construction, operation and maintenance of the LIL and the continuation of the payments and obligations pursuant to the terms of the Contracts throughout the term expressed in the Contracts and the Financing Documents. As a covenant and agreement directly in favour of the Collateral Agent for the benefit of the GAA Finance Parties, and specifically for and on behalf of Canada, such Enforcing Party as the secured party under the Subordinated Security will take such steps and actions, provide such further assurances, and enter into such agreements with the Collateral Agent, or such other party as may be designated or named by the Collateral Agent, in order to preserve and continue the contractual obligations of the Contracts, as applicable, and to achieve the intention of this provision.

6. Arrangements Regarding Payments

All payments to be made by a Contracting Party to Opco under either Contract shall be made, in lawful money of Canada, directly for deposit into the [<*>Opco Revenue Account<*>], and shall be accompanied by a notice from such Contracting Party stating that such payments are made under such Contract. Opco hereby authorizes and irrevocably directs each Contracting Party

to make such payments as aforesaid and agrees such payment shall satisfy each Contracting Party's obligation to pay such amounts to Opco under the Contracts.

7. Communications from Contracting Parties

Until such time as an Agent Party notifies the Contracting Parties in writing of its exercise of rights under the Collateral Trust Deed, each Contracting Party shall continue to communicate directly with Opco with regard to its continuing obligations under each Contract. Upon receipt by a Contracting Party of written instructions from an Agent Party pursuant to its exercise of rights under the Collateral Trust Deed, such Contracting Party agrees to and shall comply with and treat any and all written instructions received from such Agent Party as if they came directly from Opco.

8. Obligations of the Contracting Parties under the Contracts

Each Contracting Party acknowledges and agrees with the Security Trustee that neither this Agreement nor any Security Interests created by Opco in favour of the Security Trustee shall in any way lessen or relieve such Contracting Party from its obligation to observe, satisfy and perform each and every term, condition, other provision and obligation set forth in or required to be observed by such Contracting Party in order to fulfill its obligations under the Contracts or any obligations of such Contracting Party to Opco.

9. Assignments to other trustees, administrative agents

Opco and each Contracting Party agrees that the Security Trustee may assign the rights under this Agreement, in whole or in part, to any other trustee from time to time to the same extent, and on and subject to the same terms and conditions, as the Security Trustee may assign its rights under the Collateral Trust Deed without the consent of the Contracting Parties or Opco, and that each such assignee shall be entitled to rely on the representations, warranties, acknowledgements, confirmations, covenants and agreements of each of Opco and of each Contracting Party herein contained. All references to the Security Trustee in this Agreement shall be deemed to refer to the Security Trustee and/or to any such assignee, and all its actions permitted to be taken by the Security Trustee under this Agreement may be taken by any such assignee. The Security Trustee shall provide notice of any such assignment to each Contracting Party.

10. Commitment in the event of a Step-In

Notwithstanding anything to the contrary in this Agreement, the Security Trustee agrees that it and any Agent Party shall be bound by Sections 2.5(c), (d), (e), (f), (g) and (h) of the LRA, and such sections shall be enforceable by the Contracting Parties, in each case as if the Security Trustee and any Agent Party was a signatory to the LRA.

11. Further Assurances

Each of the parties hereto agrees to do all such other acts and things and to execute all such other documents as may be reasonably required to give effect to the purpose and intent of this Agreement.

12. Grammatical variations, plural, gender, headings

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined or given extended meanings shall be construed in like manner. Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Agreement.

13. Agreements

Each reference in this Agreement to any document (including this Agreement, the Contracts and any other defined term that is a document) shall be construed so as to include such document (including any attached schedules, appendices and exhibits) and each change thereto, made at or before the time in question. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Recital, Article, Section, subsection, paragraph, subparagraph, clause or other portion of this Agreement.

14. Severability

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable. Each Contracting Party and Opco shall, at the request of the Security Trustee or any Agent Party, negotiate in good faith with the requesting party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by applicable Law.

15. Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the Province of Newfoundland and Labrador, including the federal Laws of Canada applicable therein, but excluding any conflict of law rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to any matter arising under, by reason of or otherwise in respect of this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or email in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

17. Conflict

If there is any inconsistency or conflict between this Agreement and the Contracts, this Agreement shall govern.

18. Notices

Any demand, notice or other communication to be made or given hereunder (“**Notice**”) shall be in writing and may be made or given by mailing it by prepaid registered mail or by transmitting it by facsimile addressed to the respective parties as follows:

(a) if to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John’s, NL
A1B 0M5
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John’s, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) if to the Security Trustee:

Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario

M5J 2Y1
Attention: Manager, Corporate Trust Services
Fax: 416-981-9777

(d) if to the Collateral Agent:

The Toronto-Dominion Bank, as Collateral Agent
TD Bank Tower
66 Wellington St. W., 9th Floor
Toronto, Ontario, Canada. M5K 1A2
Telephone: 416 982-2196
Attention: Michael A. Freeman, Vice President Loan Syndications-Agency
Fax: 416 944-6976
Email: michael.freeman@tdsecurities.com

(e) if to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL
A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

(f) to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.
500 Columbus Drive
P.O. Box 13000, Station A
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

(g) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: [●]
Fax: [●]

or to such other address, email or facsimile number as may be designated by notice given by any party to the other. Any Notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email or facsimile, will be conclusively deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by facsimile.

19. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon Opco, the Security Trustee, each Agent Party and each Contracting Party and their respective successors and permitted assigns; provided that, the Contracting Parties shall not assign or transfer any of their respective rights hereunder without the prior written consent of the Security Trustee and each Agent Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LABRADOR-ISLAND LINK OPERATING CORPORATION

Per:

Name:

Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA,
as Security Trustee**

Per:

Name:

Title:

Per:

Name:

Title:

TORONTO DOMINION BANK,
as Collateral Agent

Per:

Name:

Title:

Per:

Name:

Title:

**NEWFOUNDLAND AND LABRADOR HYDRO,
as a contracting party**

Per:

Name:

Title:

Per:

Name:

Title:

LABRADOR-ISLAND LINK PARTNERSHIP, by its general partner, Labrador-Island Link General Partner Corporation, as a Contracting Party

Per:

Name:

Title:

Per:

Name:

Title:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP

and

LABRADOR-ISLAND LINK OPERATING CORPORATION

LIL ASSETS AGREEMENT

November 29, 2013

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- SCHEDULE 1 LIL PROJECT DESCRIPTION**
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LIL ASSETS AGREEMENT

THIS LIL ASSETS AGREEMENT is made effective the ● day of ●, 2013 (the “Effective Date”)

BETWEEN:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner Labrador-Island Link General Partner Corporation (the “Partnership”)

– and –

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor (“Opco”)

WHEREAS:

- A. the Partnership was formed to carry on the business of designing, engineering, constructing, Commissioning, owning, Financing, operating and maintaining the LIL, and all activities ancillary and incidental thereto; and
- B. the Partnership has agreed to grant to Opco possession and use of the LIL by lease, licence, or similar arrangement, all in accordance with the terms and conditions of this Agreement;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants 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:

“**Acquiror**” has the meaning set forth in the Partnership Step-In Agreement;

“**Actual Demobilization List Costs**” means the actual costs incurred to complete the work on all Demobilization List Items;

“**Actual Punch List Costs**” means the actual costs incurred to complete the work on all Punch List Items;

“**Adequacy**” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria and taking into account scheduled and unscheduled outages of system elements;

“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;

“Agent Party” has the meaning set forth in the Partnership Step-In Agreement;

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

“Annual Depreciation on the LIL” has the meaning set forth in the LIL LP Agreement;

“Annual Depreciation on Sustaining Costs” means, in any Operating Year, the Undepreciated Sustaining Costs divided by the remaining Service Life of the LIL, averaged as appropriate consistent with the then current regulatory practice in NL;

“Annual Maintenance Plan” means an annual maintenance plan for the LIL prepared by Opco and Approved by the JOC setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, and containing such other information as may be required by the JOC, acting reasonably;

“Annual O&M Budget” means the annual budget for O&M Activities related to the LIL prepared by Opco for an Operating Year based on the Annual Maintenance Plan for such Operating Year and the O&M Budget, and including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“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;

“Approved by the JOC” means approved by a decision of the JOC made in accordance with Article 3 of the JOA, and **“Approves”**, **“Approved”** and **“Approval”** in relation to the JOC have correlative meanings;

“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;

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 KV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

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

“CFLCo” means Churchill Falls (Labrador) Corporation, Limited, a corporation incorporated pursuant to the laws of Canada, and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River, in the vicinity of Churchill Falls, NL;

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

“Capital Account” has the meaning set forth in the LIL LP Agreement;

“Claiming Party” has the meaning set forth in **Section 8.2(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;

“Collateral Agent” means the Toronto Dominion Bank, in its capacity as collateral agent under the Financing Documents, and includes any successor thereof in such capacity;

“Commissioning” means the testing activities required to demonstrate the LIL is ready to transmit Energy and Capacity in accordance with the LIL Project Description, and **“Commission”** and **“Commissioned”** have a correlative meaning;

“Commissioning Date” means the date on which all of the following has occurred:

- (a) the Commissioning has been completed;
- (b) NLSO has accepted in writing that the Commissioning has been completed; and
- (c) the Financing Parties have accepted in writing that the Commissioning has been completed.

“Confidential Information” means, with respect to the LIL Project and the LIL:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the

Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and

- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contains or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“Contractor” means a Person who enters into a contract with the Partnership or Opco to perform Development Activities;

“Contracts” means all agreements or commitments of the Partnership in connection with an activity or undertaking forming part of the LIL or procured in connection with Development Activities, including the right to schedule transmission service over the LIL and connecting the LIL with other transmission facilities, but excluding for certainty the LIL Real Property Interests and the LIL Real Property Rights;

“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 a correlative meaning);

“DER” means the Debt for Borrowed Money of the Partnership compared to the value of the Capital Accounts of the Partnership, expressed as a ratio;

“Debt for Borrowed Money”, with respect to any Person means, without duplication, such Person’s:

- (a) obligations for borrowed money;
- (b) obligations under letters of credit or letters of guarantee or obligations to financial institutions who issued such letters of credit or letters of guarantee for the account of such Person;

- (c) obligations under banker's acceptances, depository bills or depository notes (as these latter two expressions are defined in the *Depository Bills and Notes Act* (Canada));
- (d) Purchase Money Obligations;
- (e) obligations evidenced by bonds, debentures or promissory notes; and
- (f) obligations under guarantees with respect to obligations referred to in **Sections (a)** through **(e)** of this definition inclusively;

“Demobilization List Cost Deficiency” has the meaning set forth in **Section 2.5(d)**;

“Demobilization List Cost Estimate” has the meaning set forth in **Section 2.5(a)(ii)**;

“Demobilization List Cost Surplus” has the meaning set forth in **Section 2.5(d)**;

“Demobilization List Items” has the meaning set forth in **Section 2.5(a)(ii)**;

“Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the LIL in accordance with the LIL Project Description, and to Commission the LIL, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, the products of such activities and undertakings, and the resolution of all Claims and disputes related thereto;

“Direct Claim” has the meaning set forth in **Section 11.3(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to the other Party or an Affiliate of the other Party;

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

“Dispute Resolution Procedure” has the meaning set forth in **Section 8.1(a)**;

“Distributions” has the meaning set forth in the LIL LP Agreement;

“Effective Date” has the meaning set forth at the top of page 1 of this Agreement;

“Emera” means Emera Inc., a company incorporated pursuant to the laws of NS, and includes its successors;

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

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

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

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements, and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

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

“Fiscal Year” has the meaning set forth in the LIL LP Agreement;

“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;

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

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, Reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada.

Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

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

“**Holder**” means “holder” as defined in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

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

“**Indemnified Party**” has the meaning set forth in **Section 11.3(a)**;

“**Indemnitor**” has the meaning set forth in **Section 11.3(a)**;

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

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *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;

“Intellectual Property Rights” means the Partnership’s rights in or to the following:

- (a) any and all proprietary rights everywhere in the world provided under (i) patent law, (ii) copyright law (including moral rights), (iii) trade-mark law, (iv) design patent or industrial design law, (v) semi-conductor chip or mask work as integrated circuit topography law, or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide rights in the Confidential Information, the LIL Project Data, and in trade-marks, ideas, formulae, algorithms, concepts, inventions, processes, show-how or know-how generally, or the expression or use of the Confidential Information, the LIL Project Data, or any such trade-marks, ideas, formulae, algorithms, concepts, inventions, processes, show-how or know-how;
- (b) any and all applications, registrations, licences, sub-licences, franchises, agreements or any other evidence of a right in any of the foregoing; and
- (c) all (i) licences and waivers and benefits of waivers or, (ii) future income and proceeds from, and (ii) rights to damages and profits by reason of the infringement or violation of any of the intellectual property rights set out in **Sections (a) and (b)** of this definition.

“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 LIL or the Maritime Link;

“JOA” means the Joint Operations Agreement between Nalcor and Emera dated July 31, 2012, relating, among other things, to the operation and maintenance of the LIL;

“JOC” means the Joint Operations Committee established pursuant to the JOA;

“JOC-LIL” has the meaning set forth in **Section 2.6**;

“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;

“LIL” means equipment and facilities comprising a HVdc transmission line and all related components, including converter stations, synchronous condensers, and terminal, telecommunications and switchyard equipment, constructed between the LTA and the Island Interconnected System including:

- (a) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent;
- (b) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission lines; and
- (c) all mechanical, electrical and other systems and other technology installed under or upon any of the foregoing;

“LIL LP Agreement” means the agreement between Labrador-Island Link General Partner Corporation, as general partner, and Labrador-Island Link Holding Corporation, as limited partner, dated July 31, 2012, which establishes the Partnership;

“LIL Assets and Rights” means all real and personal property (tangible and intangible), contracts, choses in action and assets and undertakings held by the Partnership in connection with an activity or undertaking involving the LIL or any part of it, including the Contracts, Intellectual Property Rights, LIL Project Data, LIL Real Property Interests, LIL Real Property Rights, LIL Tangible Personal Property, Transmission Capability and Permits;

“LIL Assets Term” has the meaning set forth in **Section 9.1**;

“LIL Land Area” means all land, including land that is foreshore and land covered by water, that can be used or occupied under one or more of the LIL Real Property Interests or one or more of the LIL Real Property Rights, including,

- (a) any such land that is occupied by a building or other structure used in connection with the LIL;
- (b) the air space located above any such land that is or may be occupied either permanently or from time to time by tangible personal property (whether or not constituting an attachment) forming part of the LIL; and
- (c) the sub-soil located below any such land that is or may be occupied either permanently or from time to time by tunnels, drill holes, pipes, conduits, cables, wires, other structures or tangible personal property (whether or not constituting an attachment) or excavations, forming part of the LIL;

“LIL Lease” means the agreement of even date herewith between the Partnership and Opco (and NLH for certain limited purposes) by which the LIL Assets and Rights are leased, assigned or licensed, as applicable, by the Partnership to Opco;

“LIL Lease Term” has the meaning set forth in the LIL Lease;

“LIL Project” means all the activities and work associated with and involved in the construction of the LIL and the resulting completed and Commissioned LIL, the use, operation, maintenance, repair, alteration, replacement and rehabilitation of the LIL during its Service Life, and the decommissioning and removal of the LIL at the end of its Service Life;

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

“LIL Project Description” means a compilation of the fundamental engineering criteria, data and components on the basis of which the LIL is to be constructed as set forth in **Schedule 1**;

“LIL Real Property Interests” means all interests in land that are held by the Partnership in connection with an activity or undertaking involving the LIL or any part of it, including interests over, under or in respect of land that is foreshore and land covered by water, freehold and leasehold interests and easements appurtenant thereto, options and Statutory Easements;

“LIL Real Property Rights” means all rights to or for the use of or in connection with land, including land that is foreshore and land covered by water, which are not, in law, interests in land, that are held by the Partnership or Opco or by any other Person for the benefit of

either of them, respecting or in connection with an activity or undertaking involving the LIL or any part of it, including licences, permits and permissions;

“LIL Remedies Agreement” means the agreement of even date herewith among the Partnership, Opco and NLH setting forth certain specific remedies associated with the LIL Lease and the TFA;

“LIL Tangible Personal Property” means all tangible personal property held by the Partnership in connection with an activity or undertaking involving the LIL Project or any part of it so long as such property is not, in law, a fixture to any LIL Land Area, including all replacements, modifications, accessions and additions thereto, and any tangible personal property that is held by the Partnership under a lease of personal property in connection with an activity or undertaking involving the LIL Project or any part of it;

“LTA” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant and the LIL;

“LTAMP” means a long term asset management plan describing and quantifying the O&M Activities for each Operating Year in sufficient detail to determine the estimated annual Operating and Maintenance Costs and Sustaining Costs, and including:

- (a) a description of each activity, including at a minimum routine annual O&M Activities, anticipated Sustaining Activities, and retirements which do not occur annually;
- (b) the expected year of occurrence of each such activity; and
- (c) estimates of the annual costs applicable to each such activity;

“Labrador Transco” means Labrador Transmission Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

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

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

“MF Plant” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be owned and operated by Muskrat;

“MPPA” means the Multi-Party Pooling Agreement to be entered into between NLSO and the owners or operators of transmission facilities comprising the NL Transmission System

pursuant to which NLSO shall exercise operational control of, and provide transmission service over, the NL Transmission System;

“**MW**” means megawatt;

“**MWh**” means MW hour;

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

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

“**Muskrat**” means Muskrat Falls Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**NL**” means the Province of Newfoundland and Labrador;

“**NL Crown**” means Her Majesty in Right of NL;

“**NL Transmission System**” means electricity transmission assets in NL with a voltage level greater than or equal to 230 KV to be pooled under the MPPA;

“**NLH**” means Newfoundland and Labrador Hydro, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**NLSO**” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH responsible for the safe and reliable operation of the Bulk Electric System or a functionally separate division of NLH performing this function, and includes any of its successors;

“**NS**” means the Province of Nova Scotia;

“**Nalcor**” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“**Nalcor LP**” means Labrador-Island Link Holding Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**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;

“Notice” means a communication required or contemplated to be given by a Party to another Party under this Agreement, which communication shall be given in accordance with **Section 16.1**;

“O&M Activities” means all activities and undertakings performed by or on behalf of Opco after the Commissioning Date that are required to operate, maintain and sustain the LIL in accordance with Good Utility Practice, including administration and the replacement or overhaul of major components which do not extend the Service Life and, for greater certainty, includes Sustaining Activities;

“O&M Budget” means the budget prepared by Opco for the LIL based on the LTAMP and setting forth the Operating and Maintenance Costs and Sustaining Costs required to be made for each Operating Year during the LIL Lease Term, including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“Opco” has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Opco Affiliate Assignee” means an Affiliate of Opco to which all of the Opco Rights are assigned in accordance with the provisions of this Agreement;

“Opco Default” has the meaning set forth in **Section 10.1**;

“Opco Indemnified Party” has the meaning set forth in **Section 11.2**;

“Opco Rights” has the meaning set forth in **Section 14.2(a)**;

“Opco Step-In Agreement” has the meaning set forth in **Section 16.14**;

“Operating and Maintenance Costs” means, without duplication, all costs and expenses incurred for operation and maintenance of the LIL in accordance with the LIL Lease after the Commissioning Date, including costs of O&M Activities which are not Sustaining Activities, administration costs for Opco, any Taxes payable by or on behalf of Opco or in respect of amounts payable to Opco (including for greater certainty, any Taxes payable by Opco and required to be withheld by a Person on the payment of an amount to Opco), net of any such Taxes which are recovered, but grossed up and adjusted to the extent necessary so that the amount of any amounts payable to Opco which are retained by Opco, net of any such Taxes, shall equal the amount which Opco would have retained if such Taxes were not payable by or on behalf of Opco or in respect of amounts payable to Opco, any costs and expenditures related to insurance, including any deductibles, any amount payable on account of a penalty imposed by Applicable Law or contract, any amount payable on account of a judgment rendered against Opco, and expressly excluding in all instances Rent and any costs, expenses or other amounts included in Rent;

“**Operating Year**” means (a) a calendar year during the LIL Lease Term, except that the first operating year will commence on the Commissioning Date and end on December 31 of the calendar year in which such date occurs, and the last operating year will end on the date of termination or expiry of the LIL Lease Term, or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

“**PUB**” means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

“**Parties**” means the Partnership and Opco, and “**Party**” means one of them;

“**Partners**” has the meaning set forth in the LIL LP Agreement;

“**Partnership**” has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**Partnership Affiliate Assignee**” means an Affiliate of the Partnership to which all of the Partnership Rights are assigned in accordance with the provisions of this Agreement;

“**Partnership Default**” has the meaning set forth in **Section 10.3**;

“**Partnership Indemnified Party**” has the meaning set forth in **Section 11.1(a)**;

“**Partnership Rights**” has the meaning set forth in **Section 14.1(a)**;

“**Partnership Step-In Agreement**” has the meaning set forth in **Section 16.14**;

“**Permits**” means permits, licences, Regulatory Approvals and permissions held by the Partnership in connection with Development Activities or otherwise held by the Partnership in connection with an activity or undertaking involving the LIL or any part of it but, for greater certainty, excluding LIL Real Property Rights;

“**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;

“**Prepaid Rent**” means that portion of Rent paid by Opco to the Partnership in advance of the Operating Year in respect of which it will otherwise be due;

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

“**Prepaid Rent Reserve Account**” means a separate reserve account established by the Partnership to hold Prepaid Rent;

“**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;

“**Punch List Cost Deficiency**” has the meaning set forth in **Section 2.5(c)**;

“**Punch List Cost Estimate**” has the meaning set forth in **Section 2.5(a)(i)**;

“**Punch List Cost Surplus**” has the meaning set forth in **Section 2.5(c)**;

“**Punch List Items**” has the meaning set forth in **Section 2.5(a)(i)**;

“**Purchase Money Obligations**” means, with respect to any Person, any indebtedness assumed as part of, or issued or incurred in respect of, the cost of acquisition, including by way of conditional sales contract or leasing by way of a capital lease, of any property (including shares of capital stock) or of the cost of construction, improvement or extension of any property acquired, constructed, improved or extended or leased by way of a capital lease, which indebtedness existed at the time of acquisition, construction, improvement or extension or was created, issued, incurred, assumed or guaranteed contemporaneously with the acquisition, construction, improvement or extension or leasing by way of a capital lease or within 90 days after the completion thereof, and includes any extension, renewal or refinancing of any such indebtedness if the amount thereof outstanding on the date of such extension, renewal or refinancing is not increased, it being expressly understood that Purchase Money Obligations shall not include any trade payables incurred in the ordinary course of business and for the purpose of carrying on same or any indebtedness incurred in connection with any sale and leaseback transaction;

“**Qualified Assignee**” means a Person which is:

- (a) an administrative or security agent of a Financing Party;
- (b) with respect to the Opco Rights, an Affiliate or Affiliates of Opco, or a Holder, provided
 - (i) Opco and such Affiliate(s) or Opco and such Holder, as applicable, enter into an agreement with the Partnership and NLH substantially in the form of **Schedule 2**; and
 - (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of this Agreement, the LIL Lease, the TFA and the LIL Remedies Agreement; and
- (c) with respect to the Partnership Rights, an Affiliate or Affiliates of the Partnership, or a Holder, provided
 - (i) the Partnership and such Affiliate(s) or the Partnership and such Holder, as applicable, enter into an agreement with Opco and NLH substantially in the form of **Schedule 2**; and

- (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of this Agreement, the LIL Lease, the TFA, the LIL Remedies Agreement and all of the Partnership's right, title and interest in the LIL Assets and Rights;

"Qualified Partner" has the meaning set forth in the LIL LP Agreement;

"RROE" has the meaning set forth in the LIL LP Agreement, and as determined in accordance with **Section 4.6**;

"Receiving Party" means a Party or an Affiliate of a Party that receives Confidential Information from the other Party or an Affiliate of the other Party;

"Recipient Party" has the meaning set forth in **Section 8.2(a)**;

"Refinance" means to extend, renew or refinance any indebtedness where the amount of such indebtedness outstanding on the date of such extension, renewal or refinancing is not increased;

"Regular Business Hours" means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

"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;

"Reliability" means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security;

"Reliability Standards" means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

"Rent" means for each Operating Year, an annual amount equal to:

- (a) applicable operating expenses to administer the Partnership calculated on an annual basis; plus
- (b) Annual Depreciation on the LIL (prorated if necessary); plus
- (c) Annual Depreciation on Sustaining Costs (prorated if necessary); plus
- (d) the Tax Adjustment Amount calculated on an annual basis; plus
- (e) any Taxes payable by the Partnership (excluding any Taxes which are or will be included in the Tax Adjustment Amount but including, for greater certainty, any Taxes payable by the Partnership and required to be withheld by Opco on the payment of Rent), grossed up to the extent necessary so that the amount of Rent retained by the Partnership, net of any such Taxes, shall equal the amount of the

Rent the Partnership would have retained if such Taxes were not payable by the Partnership; plus

- (f) annual return on the Undepreciated Capital Asset and the Undepreciated Sustaining Costs,
 - (i) calculated as a percentage, that is equal to:
 - (A) the actual annual cost of the debt owed by the Partnership as a percentage, being interest expense divided by the debt principal value, averaged as appropriate; plus
 - (B) the RROE applicable from time to time, averaged as appropriate and subject to a minimum value to achieve the debt service coverage ratio agreed in the Financing Documents;
 - both weighted according to the DER; multiplied by
 - (ii) the sum of the Undepreciated Capital Asset plus Undepreciated Sustaining Costs; plus
- (g) annual recovery of cost of capital (without duplication) associated with Reserves as determined by the GP or required by a Restrictive Agreement,

all averaged as appropriate consistent with the then current regulatory practice in NL;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

“Reserves” has the meaning set forth in the LIL LP Agreement;

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

“Retired Limited Partner” has the meaning set forth in the LIL LP Agreement;

“Security” means the ability of an electrical system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

“Service Life” means the period of time immediately following the Commissioning Date, as designated by an Authorized Authority, from time to time, during which the LIL can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LIL Project Description;

“Standards Authority” means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the LIL;

“**Statutory Easement**” has the meaning attributed to it by, and grants to a Holder the rights set forth in, the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

“**Sustaining Activities**” means, with respect to O&M Activities, those activities and undertakings of a capital nature which Opco determines after the Commissioning Date are necessary to sustain the LIL in proper operating condition during its Service Life;

“**Sustaining Costs**” means the costs incurred as a result of Sustaining Activities, including an allowance for funds used during construction consistent with the then current regulatory practice in NL;

“**TFA**” means the agreement of even date herewith among NLH, Opco and the Partnership relating, among other things, to the recovery from NLH of costs of the LIL incurred by Opco and the Partnership;

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

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

“**Tax Adjustment Amount**” has the meaning set forth in the LIL LP Agreement;

“**Third Party Claim**” has the meaning set forth in **Section 11.3(b)**;

“**Transmission Capability**” means the ability to transmit Energy across a set of transmission facilities and, in the case of the LIL, means the ability of the LIL to transmit Energy between the LTA and the Island Interconnected System near Soldiers Pond on the Avalon Peninsula;

“**Undepreciated Capital Asset**” has the meaning set forth in the LIL LP Agreement;

“**Undepreciated Sustaining Costs**” means, in any Operating Year, the accumulated Sustaining Costs at the end of such Operating Year plus Reserves associated with Sustaining Costs less accumulated Annual Depreciation on Sustaining Costs; and

“**Voting Shares**” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar

functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**”, “**Section**”, “**Schedule**” or “**Appendix**” followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (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 GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement 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 Effective Date, 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 set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “**approved**”, “**decided**” or “**determined**” by a Party or requires a Party’s or its Representative’s “**consent**”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.
- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 8**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

- Schedule 1 - LIL Project Description
- Schedule 2 - Form of Assignment
- Schedule 3 - Dispute Resolution Procedure
- Schedule 4 - Confidential Information
- Schedule 5 - Partnership Step-In Agreement

**ARTICLE 2
INTERCONNECTION, FINANCING AND OTHER MATTERS WITH RESPECT
TO THE LABRADOR-ISLAND LINK**

2.1 Interconnection

- (a) Interconnection with the Labrador Transmission Assets - The Partnership shall:
 - (i) interconnect, at its cost, the LIL with the LTA in accordance with Good Utility Practice and applicable interconnection procedures; and
 - (ii) enter into an interconnection agreement with Labrador Transco, acceptable to Opco acting reasonably, relating to such interconnection.
- (b) Interconnection with the NLH Transmission Facilities - The Partnership shall:

- (i) interconnect, at its cost, the LIL with the existing transmission facilities of NLH, in accordance with Good Utility Practice and applicable interconnection procedures; and
- (ii) enter into an interconnection agreement with NLH, acceptable to Opco acting reasonably, relating to such interconnection.

2.2 Financing

The Partnership shall obtain all funds necessary to (a) interconnect the LIL with each of the LTA and the transmission facilities of NLH, (b) complete the upgrades and improvements to the Island Interconnected System to facilitate the operation of the LIL, and (c) complete the Development Activities.

2.3 Multi-Party Pooling Agreement

The Partnership (if required) and Opco shall enter into the MPPA in the form and at the time required by the NLSO.

2.4 Partnership Commitment to Perform Upgrades

The Partnership shall perform, in accordance with Good Utility Practice and at its cost, all upgrades and improvements to the Island Interconnected System to facilitate the operation of the LIL. NLH shall be the legal and beneficial owner of all such upgrades and improvements.

2.5 Post Commissioning Matters

- (a) Post Commissioning Work - At least 30 days prior to the Commissioning Date, the Partnership shall:
 - (i) create a list of items of minor work remaining to be performed or corrected for the LIL (the “**Punch List Items**”) and an estimate of the cost to complete such items (the “**Punch List Cost Estimate**”);
 - (ii) create a list of all demobilization work (the “**Demobilization List Items**”) and the cost to complete such items (the “**Demobilization List Cost Estimate**”); and
 - (iii) deliver to Opco the Punch List Items, the Punch List Cost Estimate, the Demobilization List Items and the Demobilization List Cost Estimate.
- (b) Agency - On or immediately after the Commissioning Date the Partnership shall pay to Opco the amount of the Punch List Cost Estimate and the Demobilization List Cost Estimate. Opco shall act as agent of the Partnership to use these funds and complete the Punch List Items and the Demobilization List Items. Opco shall use commercially reasonable efforts to have such work completed within 365 days following the Commissioning Date, and shall provide the Partnership with evidence of such completion.

- (c) Actual Punch List Costs - Within 15 days after the completion of the Punch List Items Opco shall deliver to the Partnership and NLH written notice setting out the Actual Punch List Costs and whether the Actual Punch List Costs are (i) greater than the Punch List Cost Estimate (a “**Punch List Cost Deficiency**”), or (ii) less than the Punch List Cost Estimate (a “**Punch List Cost Surplus**”). The Partnership shall have no obligation whatsoever to Opco for a Punch List Cost Deficiency, and Opco shall have no obligation whatsoever to the Partnership for a Punch List Cost Surplus.
- (d) Actual Demobilization List Costs - Within 15 days after the completion of the Demobilization List Items Opco shall deliver to the Partnership and NLH written notice setting out the Actual Demobilization List Costs and whether the Actual Demobilization List Costs are (i) greater than the Demobilization List Cost Estimate (a “**Demobilization List Cost Deficiency**”), or (ii) less than the Demobilization List Cost Estimate (a “**Demobilization List Cost Surplus**”). The Partnership shall have no obligation whatsoever to Opco for a Demobilization List Cost Deficiency, and Opco shall have no obligation whatsoever to the Partnership for a Demobilization List Cost Surplus.
- (e) Use of Surplus Funds By Opco - Opco shall use a Punch List Cost Surplus and a Demobilization List Cost Surplus to carry out O&M Activities.
- (f) Survival - This **Section 2.5** shall survive the termination of this Agreement until the obligations set forth herein are fulfilled in accordance with its terms.

2.6 Establishment of JOC-LIL

Upon the expiry or termination of the JOA, or upon an earlier termination or dissolution of the JOC, a joint operations committee specifically in respect of the LIL (“**JOC-LIL**”) shall be established consisting of representatives appointed by each of Opco and the Partnership, provided that the Partnership shall have the right to delegate to NLH its right to appoint representatives to the JOC-LIL. From time to time the Partnership, or its delegate, and Opco may appoint other representatives in replacement of those initially appointed.

2.7 JOC-LIL Composition, Quorum, Duration and Procedures

- (a) Composition - Following its establishment, the JOC-LIL shall at all times be composed of two representatives appointed by each of Opco and the Partnership (or its delegate). Each of Opco and the Partnership (or its delegate) shall notify the other of the identity of its members and shall make reasonable efforts to maintain continuity of its members on the JOC-LIL. Each of Opco and the Partnership (or its delegate) shall designate one of its representatives on the JOC-LIL to be the chair and vice-chair, respectively. Where the chair or vice-chair is unable to act, he or she may from time to time delegate his or her responsibilities to another JOC-LIL representative of, respectively, Opco and the Partnership (or its delegate).
- (b) Quorum - The quorum for the transaction of business by the JOC-LIL shall be the chair and the vice-chair.

- (c) Duration - The JOC-LIL shall be established as provided for in **Section 2.6** and shall continue until the end of the Service Life.
- (d) Procedures - Except as otherwise provided for in this Agreement, the JOC-LIL shall establish procedures for the conduct of its affairs.
- (e) References to JOC - Upon establishment of the JOC-LIL, all references to the JOC in this Agreement shall be deemed to refer to the JOC-LIL.

2.8 **JOC-LIL Mandate and Operation**

- (a) Mandate of JOC-LIL - The provisions of the JOA that establish the role, mandate and operation of the JOC shall be deemed to be incorporated by reference into this Agreement to establish the role, mandate and operation of the JOC-LIL hereunder, except to the extent of a conflict with an express term of this Agreement, and with such adjustments as are reasonably required in order to account for the differences between the operational and commercial contexts of the JOC under the JOA on the one hand, and the JOC-LIL under this Agreement, on the other. The Partnership and Opco agree that a primary purpose of the JOC-LIL shall be to provide a forum for the Partnership (or its delegate) to obtain information regarding financial and operational matters in respect of the LIL and to provide meaningful input into the decision-making process in respect of such matters.
- (b) Disputes - If Opco and the Partnership (or its delegate) are unable to agree upon the manner in which the JOA provisions regarding the JOC are to be incorporated in this Agreement pursuant to **Section 2.8(a)**, then such disagreement shall be a Dispute to be resolved pursuant to the Dispute Resolution Procedure.

2.9 **Survival of JOC-LIL Provisions**

Sections 2.6, 2.7, 2.8 and this **Section 2.9** shall survive the termination of this Agreement.

ARTICLE 3
LEASE OF THE LABRADOR-ISLAND LINK

3.1 **LIL Lease**

- (a) Lease - Subject to Opco and the other parties thereto having entered into the TFA, the Partnership and Opco shall enter into the LIL Lease.
- (b) Consents and Other Approvals - The Partnership and Opco shall work together in a commercially reasonable manner to ensure that all consents and approvals required for the lease, sub-lease, assignment or licence, as applicable, of any LIL Assets and Rights are obtained prior to the Commissioning Date. In this regard, the Partnership and Opco shall form a committee at least two years prior to the anticipated Commissioning Date (as set forth in the then current master project schedule for the

Development Activities) to identify the required consents and approvals, and ensure that they are obtained on or before the Commissioning Date.

- (c) Certain Schedules to the LIL Lease - The Partnership and Opco shall work together in a commercially reasonable manner to obtain the information and rights required for the completion prior to the Commissioning Date of the outstanding or incomplete Schedules to the LIL Lease, being Schedule 3 - LIL Land Area, Schedule 4 - Statutory Easements and Schedule 5 - LIL Tangible Personal Property. If the Partnership and Opco are unable to agree on the contents of any such Schedule, or any part thereof, such disagreement shall be a Dispute to be resolved pursuant to the Dispute Resolution Procedure.

3.2 Assignment and Assumption of Agreements

On the Commissioning Date the Partnership shall assign certain rights to Opco and Opco shall assume certain obligations as each are set forth in (a) the interconnection agreement between Labrador Transco and the Partnership for the interconnection of the LIL with the LTA, (b) the interconnection agreement between NLH and the Partnership for the interconnection of the LIL with the transmission facilities of NLH, and (c) the MPPA.

3.3 Use of the Labrador-Island Link

The Partnership and Opco agree and acknowledge that the transmission of electricity on the LIL will only occur on an open and non-discriminatory basis in compliance with open access and regulatory requirements.

ARTICLE 4 FINANCIAL MATTERS

4.1 Prepaid Rent

- (a) Payment - Subject to the limitation set forth in **Section 4.1(b)**, at any time during the LIL Assets Term, Opco shall have, at its sole discretion and option, the right to prepay to the Partnership all or any portion of the Rent due and payable for a future Operating Year. Opco shall exercise its right to prepay Rent or a portion thereof by sending a Notice (the "**Prepaid Rent Notice**") of prepayment to the Partnership indicating the Operating Year(s) to which the prepayment relates, together with the amount of the Prepaid Rent. Unless otherwise agreed, within 30 days after delivery of the Prepaid Rent Notice, Opco shall pay the amount of the Prepaid Rent to the Partnership.
- (b) Limitation - Notwithstanding any other provision of this Agreement, Opco's right to prepay Rent to the Partnership shall terminate on the occurrence of any enforcement proceeding (or notice thereof) by a Financing Party pursuant to the Financing Documents.

- (c) Nature of the Right - Opco intends to avail itself of this Prepaid Rent option during each of the calendar years during which construction of the LIL will not have been completed, including the calendar year which will include the Commissioning Date, and in the calendar years thereafter if it so determines. This stated intention of Opco does not create any right on the part of the Partnership to require Prepaid Rent from Opco at any time during the LIL Assets Term nor to require any minimum amount of Prepaid Rent to be paid if and when Opco were to exercise its option to prepay Rent. Furthermore, the Partnership shall have no recourse against Opco were Opco to determine not to prepay Rent during any calendar year.

4.2 Accounting for Prepaid Rent

Upon receiving Prepaid Rent, the Partnership shall forthwith record in its financial and accounting books the amount of Prepaid Rent received and the Operating Year to which it shall apply. As part of its obligation to grant Opco the right to peaceably enjoy use of the LIL without any interruption or disturbance by any Financing Party, Agent Party or Acquiror as provided by Section 3.10(c) of the LIL Lease, and without affecting its right to retain and use the income received by way of Prepaid Rent, the Partnership shall invest the amount of Prepaid Rent in the Prepaid Rent Reserve Account. During the LIL Lease Term, Prepaid Rent (or the applicable portion thereof) held in the Prepaid Rent Reserve Account shall be released during the Operating Year(s) for which it was prepaid and applied until the balance in the Prepaid Rent Reserve Account is reduced to a zero dollar balance. The Partnership's right to retain the amounts of Prepaid Rent is unconditional, with the exception that, subject to the provisions of the Financing Documents, Prepaid Rent shall be refunded to Opco by the Partnership should Commissioning not occur for any reason.

4.3 Rent Notice to Opco

The Partnership shall not later than 18 months prior to the anticipated Commissioning Date (as set forth in the then current master project schedule for the Development Activities) deliver to Opco a Notice setting out the Partnership's estimate of the amount of Rent which will be payable to the Partnership for the first Operating Year. This Notice shall contain the estimate of Rent by component part (using the definition of Rent as a guide), and otherwise be accompanied by such detail and supporting documentation as reasonably required by Opco to review the calculation of the estimated Rent payable during the first Operating Year.

4.4 Budget Information for the Partnership

Opco shall:

- (a) not later than 18 months prior to the anticipated Commissioning Date (as set forth in the then current master project schedule for the Development Activities) deliver to the Partnership the O&M Budget; and
- (b) not later than 120 days prior to the anticipated Commissioning Date (as set forth in the then current master project schedule for the Development Activities) deliver to the Partnership the Annual O&M Budget for the first Operating Year.

4.5 **Interest on Overdue Accounts**

If a Party fails to pay on the due date any amount payable pursuant to this Agreement, it shall pay interest on such unpaid amount from the due date or, as the case may be, the date of demand, to the date of actual payment (after as well as before judgment) at a rate equal to the Prime Rate plus three percent per annum.

4.6 **RROE**

- (a) The RROE to be earned by the Partnership in respect of any Fiscal Year shall be determined in accordance with the following principles and shall be changed whenever a reference rate of return is made effective by the PUB or other Authorized Authority, with the prior reference rate of return applying during the part of the Fiscal Year before the change and the new reference rate of return applying during the portion of the Fiscal Year after the change:
 - (i) if during such Fiscal Year there is only one privately-owned regulated electrical utility in NL, the RROE shall be equal to the rate of after tax-return on equity approved by the PUB in respect of such utility for such Fiscal Year; and
 - (ii) if during such Fiscal Year there is more than one privately-owned regulated electrical utility in NL, the RROE shall be the average of the rates of after-tax return on equity approved by the PUB in respect of all such utilities for such Fiscal Year.
- (b) If during such Fiscal Year there are no privately-owned regulated electrical utilities in NL, the RROE shall be the average of the rate of after-tax return on equity approved for such Fiscal Year for the four largest (measured by asset base), privately-owned regulated electrical utilities in Canada (but excluding both Nalcor and Emera and their Affiliates), provided that if there are fewer than four such utilities, the average referred to above shall be the average of all such utilities.

**ARTICLE 5
INSURANCE**

5.1 **Insurance Program**

- (a) Insurance Coverages - Unless otherwise agreed by the Partnership and Opco, the Partnership shall, during the LIL Assets Term at its cost and expense, place or cause to be placed a program of insurance covering the LIL Assets and Rights, the LIL Land Area as applicable, and all Development Activities. Such insurance shall include the following coverages:
 - (i) All-risk Course of Construction (Builder's Risk), including both marine and on-shore property;

- (ii) Third Party Liability coverage; and
 - (iii) other coverages as may be deemed appropriate giving due consideration to the insurable risks of the LIL Project.
- (b) Limits, Deductibles and Exclusions - In each case, the insurance shall provide for limits, deductibles, exclusions and other terms and conditions as may be appropriate for the LIL Project, giving due consideration to:
 - (i) the values at risk and the maximum loss exposures;
 - (ii) exposures to third party liabilities;
 - (iii) commercial availability and commercially reasonable cost of such insurance;
 - (iv) the reasonable practices employed by similar entities and similar projects in Canada; and
 - (v) the Partnership's and Opco's financial ability and desire to retain certain risks;
- (c) Other Requirements - Unless otherwise agreed by the Partnership and Opco, all insurance procured pursuant to this **Section 5.1** shall, as applicable:
 - (i) be at the expense of the Partnership and be primary, non-contributing with, and not in excess of, any other insurance available to Opco;
 - (ii) provide for 30 days notice to Opco in the event of cancellation or material change that reduces or restricts the insurance, provided that if insurers shall provide notice earlier than 30 days, the Partnership shall immediately provide Notice to Opco of same; and
 - (iii) remain in full force and effect at all times until the Commissioning Date.
- (d) Lender Requirements - The Partnership and Opco shall cooperate fully with each other and shall assist each other in complying with obligations imposed by the Financing Parties relating to insurance coverage provided pursuant to this **Section 5.1**, including naming the Financing Parties as first loss payees, and the use of insurance proceeds in the event of a catastrophic loss.
- (e) Benefit of Insurance - The insurance programs and policies are for the mutual benefit of the Partnership and Opco and their respective Affiliates. Unless both the Partnership and Opco and their applicable respective Affiliates are named insureds, each policy shall include a waiver of subrogation in favour of, and shall name as additional insured, the Partnership or Opco, as the case may be, their Affiliates as appropriate, and their respective directors, officers and employees.

- (f) Contractors - Contractors, to the extent their contracts require them to procure insurance, shall be required to comply with such insurance provisions as may be required.
- (g) Evidence of Insurance - If requested by a Party, the procuring Party shall supply satisfactory evidence of insurance obtained pursuant to this **Section 5.1** when obtained and thereafter upon renewal of such insurance.
- (h) Placement of Required Insurance - If a Party fails to obtain or maintain any insurance required to be maintained by it hereunder, any other Party intended to have the benefit of such insurance may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of the Party that failed to obtain the insurance.
- (i) Effect of Failure to Insure - Notwithstanding **Section 5.1**, none of the obligations of the Parties in this Agreement shall be reduced, or in any way affected, or diminished in any respect, by a failure of a Party to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by a denial of coverage of any insurance, nor shall any Party be entitled to any indemnity or contribution as a result of any such failure to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by any denial of coverage of any insurance.
- (j) Site Visits - Opco will provide to the Partnership evidence of liability and automobile insurance in anticipation of any site visits with respect to the LIL.
- (k) Corporate Policies - It is understood and agreed that the Partnership may provide the coverage referenced in this Agreement through policies covering other assets being constructed by Affiliates of the Partnership.

ARTICLE 6
INFORMATION, ACCESS AND REPORTING

6.1 **Records and Audits**

Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the LIL Assets Term, including design records, shall be maintained for the LIL Assets Term and the LIL Lease Term; all other documents shall be retained for the longer of (a) any period prescribed by Applicable Law, and (b) 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 this Agreement. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

6.2 Access to the LIL

Each Party shall have the right, from the Effective Date through to the end of the LIL Assets Term, upon reasonable advance Notice to the other Party, to access the LIL Project for the sole purpose of examining the LIL or the conduct of the Development Activities in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the LIL Project and shall not compromise the safety of persons or property. While accessing the LIL Project, the Parties and their Representatives shall follow all rules and procedures established for visitors to the site which are related, but not limited, to safety and security. The inspection of the LIL or the exercise of any audit rights or the failure to inspect the LIL or to exercise audit rights by or on behalf of a Party shall not relieve the other Party of any of its obligations under this Agreement. No Opco Default or Partnership Default will be waived or deemed to have been waived solely by any inspection by or on behalf of the other Party. In no event will any inspection by a Party hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

6.3 Communications with Authorized Authorities

Each Party, with respect to the LIL Project, shall, upon written request by the other Party and to the extent permitted by Applicable Law, provide such other Party with copies of all communications and correspondence to any and all Authorized Authorities.

**ARTICLE 7
TAXES**

7.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 7.1(c)**,
 - (i) if Opco is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, Opco shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership under this Agreement, and the Partnership shall promptly reimburse Opco for such Taxes to the extent not so offset;

- (ii) if the Partnership is required by Applicable Law to remit or pay Taxes which are Opco's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to Opco under this Agreement, and Opco shall promptly reimburse the Partnership for such Taxes to the extent not so offset; and
 - (iii) 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 7.1(a)** and **7.1(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 from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 7.3**; 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 7.1(b)** and **7.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
 - (i) Opco is solely responsible for the payment of income taxes and HST payable by Opco; and
 - (ii) the Partnership is solely responsible for the payment of income taxes and HST payable by the Partnership.

7.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 7.2(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.

7.3 Invoicing Tax Requirement

All invoices, as applicable, 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.

7.4 Payment and Offset

- (a) Subject to **Section 7.4(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.

7.5 HST Registration Status and Residency

- (a) Opco represents and warrants that it is registered for purposes of the HST and that its registration number is 8394 61779 RT0001, and undertakes to advise the Partnership of any change in its HST registration status or number.

- (b) The Partnership represents and warrants that it is registered for purposes of the HST and that its registration number is 8063 71100RT0001, and undertakes to advise Opco of any change in its HST registration status or number.
- (c) Opco represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise the Partnership of any change in its residency status.
- (d) The Partnership represents and warrants that it is a Canadian partnership for the purposes of the Income Tax Act, and undertakes to advise Opco of any change in its status as a Canadian partnership.

7.6 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).

7.7 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 7.7**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 7.7(a)** through **7.7(c)**.

7.8 **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.

7.9 **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 Laws, 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.

7.10 **Tax Indemnity**

Each Party (in this **Section 7.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 7** 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 7.1(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 First 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 First Party to pay any and all Taxes imposed as stated herein.

7.11 **Additional Tax Indemnity**

If one Party (in this **Section 7.11** 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 7.11** 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 7.11** 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 7.11** 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.

7.12 **Assignment**

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been authorized in accordance with this Agreement, 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 **Section 7.12** and **Article 14**.

ARTICLE 8
DISPUTE RESOLUTION

8.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 3** (the “**Dispute Resolution Procedure**”).

- (b) Disputed Payment - Notwithstanding any other provision of this Agreement, if the amount or timing of any payment is disputed by a Party, the Party liable to pay shall make the payment in full on the date such payment is required, prior to initiating any Dispute Resolution Procedure relating thereto. The Parties further agree that any payment to be received by it from the other as a result of a Dispute Resolution Procedure shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents.
- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 8**, without prejudice to either Party's rights pursuant to this Agreement.
- (d) Directions under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

8.2 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 give the Recipient Party Notice 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 of the Claiming Party to promptly give Notice.
- (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.

**ARTICLE 9
TERM AND TERMINATION**

9.1 LIL Assets Term

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

9.2 Termination

This Agreement shall terminate on the earlier of the following:

- (a) the Commissioning Date; and
- (b) subject to approval of the Financing Parties, written agreement of the Parties to terminate.

9.3 Effect of Termination

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:

- (a) the obligations set forth in **Sections 2.5 , 2.6, 2.7, 2.8, 2.9** and **16.14**;
- (b) information and access as set forth in **Sections 6.1** and **6.2**;
- (c) the obligation to continue to hold the Confidential Information of the other Party in the possession of such Party in accordance with the provisions of **Sections 13.1**; and
- (d) any other obligations that survive pursuant to **Section 16.13**.

**ARTICLE 10
DEFAULT AND REMEDIES**

10.1 Opco Events of Default

The occurrence of one or more of the following events shall constitute a default by Opco under this Agreement (an “**Opco Default**”):

- (a) Opco 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 five days after the receipt of Notice from the Partnership that such amount is due and owing;
- (b) Opco is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)** and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Opco of Notice thereof from the Partnership, unless the cure reasonably requires a longer

period of time and Opco is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by the Partnership;

- (c) any representation or warranty made by Opco in this Agreement is false or misleading in any material respect;
- (d) Opco 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; or
- (e) any Insolvency Event occurs with respect to Opco.

10.2 Partnership Remedies upon an Opco Default

- (a) General - Upon the occurrence of an Opco Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) the Partnership shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to the Partnership are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to this **Section 10.2** and **Article 12**, the Partnership may recover all Losses suffered by the Partnership that result from an Opco Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by the Partnership to recover any amounts owed to the Partnership by Opco under this Agreement.

10.3 Partnership Events of Default

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

- (a) the Partnership 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 five days after the receipt of Notice from Opco that such amount is due and owing;
- (b) the Partnership is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by the Partnership of Notice thereof from Opco, unless the cure reasonably requires a

longer period of time and the Partnership is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Opco;

- (c) any representation or warranty made by the Partnership in this Agreement is false or misleading in any material respect;
- (d) the Partnership 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; or
- (e) any Insolvency Event occurs with respect to the Partnership.

10.4 Opco Remedies upon a Partnership Default

- (a) General - Upon the occurrence of a Partnership Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Opco 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 Opco 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 this **Section 10.4** and **Article 12**, Opco may recover all Losses suffered by Opco that result from a Partnership 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 Opco to recover any amounts owed to Opco by the Partnership under this Agreement.

10.5 Equitable Relief

No Party shall have any right, remedy or recourse to terminate this Agreement for any reason without the consent of the Financing Parties. Subject to the foregoing sentence, nothing else in this **Article 10** 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.

ARTICLE 11
LIABILITY AND INDEMNITY

11.1 Partnership Indemnity

- (a) The Partnership shall indemnify, defend, reimburse, release and save harmless Opco, its Representatives, and each of their successors and permitted assigns (each such Person, a “**Partnership Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Partnership Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) any inaccuracy or breach of any representation or warranty made by the Partnership in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of the Partnership in this Agreement or any document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of the Partnership occurring in connection with, incidental to or resulting from the Partnership’s obligations under this Agreement or any document or instrument delivered pursuant to this Agreement;
- (b) Notwithstanding the foregoing, the Partnership shall have no obligation to indemnify, defend, reimburse, release or save harmless any Partnership Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Partnership Indemnified Party.

11.2 Opco Indemnity

- (a) Opco shall indemnify, defend, reimburse, release and save harmless the Partnership, the GP, their respective Representatives and each of their successors and permitted assigns (each such Person, an “**Opco Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Opco Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) an inaccuracy or breach of any representation or warranty made by Opco in this Agreement or any other document or instrument delivered pursuant hereto, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of Opco in this Agreement or any other document or instrument delivered pursuant to this Agreement; or

- (iii) any gross negligence, wilful misconduct or fraud by or on behalf of Opco occurring in connection with, incidental to or resulting from Opco's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement;
- (b) Notwithstanding the foregoing, Opco shall have no obligation to indemnify, defend, reimburse, release or save harmless any Opco Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Opco Indemnified Party.

11.3 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 11.1** or **11.2**, as applicable, (each, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 11.3**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"). The failure to promptly give the Indemnitor Notice 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 of the Indemnified Party to promptly give Notice.
- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor 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 Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor 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 Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified 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.
- (d) 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 11.3** at the Indemnitor's own

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

- (e) 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 this **Section 11.3**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of 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.

- (g) 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.

- (h) 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.
- (i) 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 the Indemnitor and an Indemnified Party, and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (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 participate in the defense of such Third Party Claim on behalf of the Indemnified Party, and all other provisions of this **Section 11.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

11.4 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured claim in accordance with the insurance coverage requirements set forth in **Article 5**, 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 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 11** and **Article 12** of this Agreement shall apply to any and all Claims.

12.2 **No Consequential Loss**

Notwithstanding any other provision of this Agreement, in no event shall the Partnership be liable to Opco, nor shall Opco be liable to the Partnership, 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 the Partnership or Opco, as the case may be, with respect to matters relating to the LIL, in favour of a third party, shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 12.2**. For the purposes of this **Section 12.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

12.3 **Insurance Proceeds**

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to:

- (a) any insurance proceeds received or entitled to be received in relation to the Claim; and
- (b) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

ARTICLE 13
CONFIDENTIALITY

13.1 **Obligations of Confidentiality**

The provisions of **Schedule 4** shall apply to Confidential Information.

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 **Partnership Assignment Rights**

- (a) General - Except to a Qualified Assignee and subject to **Section 14.1(d)**, the Partnership shall not assign its interest or rights under this Agreement, the LIL Lease, the TFA, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Partnership Rights**").
- (b) Agreement to be Bound - No assignment may be made of the Partnership Rights by the Partnership unless such assignment includes all of the Partnership Rights and the Partnership obtains the written agreement of all Persons party to the

assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Partnership Rights.

- (c) Change of Control - A change of Control of a Partnership Affiliate Assignee that would result in such Partnership Affiliate Assignee no longer being an Affiliate of the Partnership will be deemed to be an assignment of the Partnership Rights in contravention of this **Section 14.1**.
- (d) Consent Requirement - An assignment of the Partnership Rights to a Person other than an Affiliate of the Partnership, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of Opco.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.1** will be null and void.

14.2 Opco Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Section 14.2(d)**, Opco shall not assign its interest or rights under this Agreement, the LIL Lease, the TFA, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Opco Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the Opco Rights by Opco unless such assignment includes all of the Opco Rights and Opco obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Opco Rights.
- (c) Change of Control - A change of Control of an Opco Affiliate Assignee that would result in such Opco Affiliate Assignee no longer being an Affiliate of Opco will be deemed to be an assignment of Opco Rights in contravention of this **Section 14.2**.
- (d) Consent Requirement - An assignment of the Opco Rights to a Person other than an Affiliate of Opco, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of NLH and the Partnership.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.2** will be null and void.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 Opco Representations and Warranties

Opco represents and warrants to the Partnership that, as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of NL 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 Opco and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

15.2 Partnership Representations and Warranties

The Partnership represents and warrants to Opco that, as of the Effective Date:

- (a) it is a limited partnership duly organized, validly existing and in good standing under the laws of NL;
- (b) the GP is duly organized, validly existing and in good standing under the laws of NL;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action on the part of the GP and the

Partnership 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;

- (d) this Agreement has been duly executed and delivered on its behalf by the GP and constitutes a 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;
- (e) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (f) 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;
- (g) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and
- (h) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 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:

- (a) to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL
A1B 0M5
Attention: Corporate Secretary

Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.
500 Columbus Drive
P.O. Box 13000
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

(d) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted 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

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.

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 (a) disclosure of this Agreement pursuant to **Section 13.2**, and (b) 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. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

16.6 **Relationship of the Parties**

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship with the other Party. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein 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 a Party to enter into agreements or incur any obligations for or on behalf of the other Party.

16.7 **Further Assurances**

Each Party 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, each Party shall negotiate in good faith and execute 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**

- (a) This Agreement - No amendment or modification to this Agreement shall be effective unless it is in writing and signed by each Party, and is consented to in writing by NLH.
- (b) LIL Lease - Except for the completion of the Schedules contemplated by Section 2.1 of the LIL Lease, without the written consent of NLH, no amendment or modification shall be made to the LIL Lease prior to the Commissioning Date.
- (c) Without the written consent of the Collateral Agent no amendment may be made to:
 - (i) The definitions in **Section 1.1 (A)** of “Acquiror”, “Collateral Agent”, “Commissioning Date”, “Financing”, “Financing Documents”, “Financing Parties”, “Force Majeure”, “Qualified Assignee” and “Rent”; or (B) that are used in a definition referred to in **Section 16.10(c)(i)(A)**;
- (d) **Sections 16.10 or 16.14**; or
- (e) **Articles 2, 3, 9, 10, 11, 12 or 14**.

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 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 such Party 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**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties arising out of this Agreement. 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 **Step-In Agreements**

On the written request of a Financing Party, the Parties shall execute and deliver the step-in agreements in the form attached as Schedule 5 to the TFA (the “**Opco Step-In Agreement**”) and attached as **Schedule 5** (the “**Partnership Step-In Agreement**”), as applicable.

16.15 **Waiver of Sovereign Immunity**

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) 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.

16.16 **Successors and Assigns**

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

16.17 **Affiliates of Nalcor**


Notwithstanding any other provision of this Agreement, the NL Crown shall be deemed to not be an Affiliate of Nalcor, Opco, the Partnership, the GP or Nalcor LP.

[The remainder of this page is intentionally left blank.]

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


LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, **LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION**


By: 
Name: Gilbert Bennett
Title: Vice President

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

LABRADOR-ISLAND LINK OPERATING CORPORATION

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

By: 
Name: Robert Hull
Title: GM (Commercial & Financing) & CRO
We have authority to bind the corporation.

LIL ASSETS AGREEMENT

SCHEDULE 1

LIL PROJECT DESCRIPTION

SCHEDULE 1
LIL PROJECT DESCRIPTION

Section 1 Labrador - Island Link (LIL)

Overall HVdc system consists of a 900 MW HVdc Island Link between Labrador and Newfoundland.

Section 2 Construction Power

The following power supply sources will be used for construction power:

- Muskrat Falls: A 25 kV tap from the construction power system for the Muskrat Falls Generating Facility (see Construction Power)
- Forteau Point: A 25 kV tap from an existing distribution system located approximately 2.5 km away.
- Shoal Cove: A 25 kV tap from an existing distribution system located approximately 700m away.
- L'Anse Au Diable: A 14.4 kV tap from an existing distribution system located approximately 400 m away.
- Dowden's Point: A 14.4 kV tap from an existing distribution system located approximately 1.5 km away.
- Soldiers Pond: A 25 kV tap from an existing distribution system located approximately 4 km away.

Section 3 Construction Telecommunication Systems - Labrador-Island Link

Provision of telecommunications services and infrastructure during the construction phase to the end of the Project along the 315 kV HVac and the ± 350 kV HVdc transmission lines and associated construction camps, including the CF Extension Switchyard construction camp.

- Services along the transmission line rights-of-way
- Land Mobile Radio System (LMRS)
- Services available at the various remote campsites
- Data (corporate and personal)
- Telephony (corporate and personal)
- Network Management System (NMS)
- Closed Circuit Television (CCTV) and
- Security and Access Control System (SACS)

Section 4 Labrador Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- Situated on the south side of the Churchill River on a level fenced site.

- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 5 Electrode Line - Labrador

- An *electrode line* carrying two conductors with the first 370 km to be supported on the HVdc lattice steel towers from Muskrat Falls to Forteau Point and the remaining section from Forteau Point to L'Anse au Diable to be supported on a wood pole line.
- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 6 Electrode Labrador

- A shoreline pond *electrode* to be located at L'Anse au Diable on the Labrador side of the SOBI.
- Nominal monopolar rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.

Section 7 Labrador - Island Overland HVdc Transmission

- An HVdc overhead transmission line, ± 350 kV bi-pole, to connect the Muskrat Falls *Converter Station* to the Labrador Transition Compound at the Strait of Belle Isle and then to connect the Northern Peninsula Transition Compound at the Strait of Belle Isle to the Soldiers Pond *Converter Station*.
- Transmission line to carry both poles (single conductor per pole) and one OPGW. The Labrador section is to carry two *electrode* conductors from the Muskrat Falls *Converter Station* to Forteau Point (see 6310 Electrode Line - Labrador).
- The HVdc transmission line is to have a designed nominal power capacity of 900 MW; however, given the mono-polar operation criteria, each pole is to have a nominal rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- *Counterpoise* installed from station-to-station.
- Towers are to be galvanized lattice steel, with self-supported angles and dead ends, and guyed suspension towers.
- 50 year *Reliability Level Return Period* of loads, with respect to Nalcor Energy operating experience and LCP specific modeling and test programs.

Section 8 Transition Compound - Labrador

- Situated on a level fenced site at Forteau Point.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Overhead line to cable transition equipment.

- High-speed switching, control, protection, monitoring and communication equipment.

Section 9 Marine Crossing - SOBI - General

- ± 350 kV, 900 MW submarine cable system to transmit power across the SOBI in bipolar mode for 50-year design life, with capabilities to allow configuration in monopolar mode.
- Each cable to have a nominal rating of 1286 A (one pu per pole) and a transient rating of 2572 A (two pu per pole) for five minutes in mono-pole mode.
- Consists of three *mass impregnated* submarine cables and associated components, inclusive of one spare submarine cable.
- Land cables shall connect submarine cables to cable termination system within the transition compound.
- The route for the submarine cable(s) crossing shall be designed to meet the transmission, protection, reliability, and design life requirements, and give consideration to technical and economic optimization.
- Cables shall be adequately protected along the entire length of the crossing as required. Cable protection methodology will employ proven technologies only, and may include rock placement, trenching, horizontal directional drilling (HDD) and concrete mattresses.
- Where discrete protection application is required, protection measures shall be designed to meet the transmission and reliability requirements.

Section 10 Transition Compound - Northern Peninsula

- Situated on a level fenced site at Shoal Cove.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Cable to overhead line transition equipment.
- High-speed switching, control, protection, monitoring and communication equipment.

Section 11 Soldiers Pond Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.
- Situated next to the Soldiers Pond switchyard on the Avalon Peninsula on a level fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 12 Electrode Line - Newfoundland East

- An *electrode line* carrying two conductors generally follows the existing transmission ROW from Soldiers Pond to Conception Bay.
- Wood pole construction.

- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 13 Electrode Newfoundland East

- A shoreline pond *electrode* to be located at Dowden's Point on the east side of Conception Bay.
- Nominal rating of 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.

Section 14 Soldiers Pond Switchyard

- Situated on the north-east side of Soldiers Pond on a level, fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Electrical layout of the switchyard is to be in accordance with the proposed SLD.
- Switchyard to interconnect six 230 kV HVac transmission lines (three existing transmission lines looped in), the synchronous condensers and the Soldiers Pond *Converter Station*.

Section 15 Island System Upgrades East

- Three 175 MVAR high-inertia synchronous condensers at Soldiers Pond.
- 230 kV circuit breaker replacements including Holyrood, B1B11, B1L17, B12L17, B2B11, B2L42, B12L42, B2L18, B3B13 and B12B15 and Bay d'Espoir B4B5.
- 66 kV circuit breaker replacements including Hardwoods B7T1, B7T5 and B7B8 230 kV and 138 kV circuit breaker replacements.
- Replacement of conductors, 230 kV transmission line - Bay d'Espoir to Sunnyside.
- Splitting and Re-termination of three existing 230 kV transmission lines (TL201, TL217 and TL242) into the new Soldier's Pond Terminal Station forming six 230 kV line terminations. This requires construction of 6 x 1.6 km of 230 kV transmission line complete with overhead ground wire to provide lightning protection for the six new transmission line terminations.
- Upgrade of the protection and control systems at Hardwoods, Oxen Pond, Holyrood and Western Avalon Terminal Stations.

Section 16 Operations Telecommunications System - Island Link

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers.
- OTN Layer shall be the telecommunications backbone and utilize the OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN Layer equipment nodes shall be designed based upon the least total cost of ownership alternative.
- Convergence Layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the Access Layer subsystems for transmission on the OTN.

- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance.

The Island Transmission Link Telecommunication Assets specifically includes the following.

- HVdc OPGW fibre optics connecting
 - Muskrat Falls *Converter Station* to Forteau Point Transition Compound
 - Shoal Cove Transition Compound to Soldiers Pond *Converter Station*
- ADSS fibre optics connecting
 - Forteau Point Transition Compound to the L'Anse au Diable *Electrode*
 - Soldiers Pond *Converter Station* to Dowden's Point *Electrode*
- Fibre optic infrastructure shall also be used to connect
 - Forteau Point Transition Compound to Shoal Cove Transition Compound by optic fibres embedded in each power cable being installed across the SOBI
 - Soldiers Pond *Converter Station* to the NLH Energy Control Centre (ECC) in St. John's
 - Soldiers Pond *Converter Station* to the NLH Backup Control Centre (BCC)
- OTN Layer optical-electronics associated with the above referenced HVdc OPGW fibre optic interconnections.
- Convergence and Access Layers telecommunication systems associated with all of the above referenced fibre optic interconnections, except these telecommunication layers at MF.
- NLH ECC and BCC SCADA system upgrades

LIL ASSETS AGREEMENT

SCHEDULE 2

FORM OF ASSIGNMENT

**SCHEDULE 2
FORM OF ASSIGNMENT**

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ASSIGNMENT OF LIL ASSETS AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the ● day of ●, 20__.

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of Newfoundland and Labrador, by its general partner, Labrador-Island Link General Partner Corporation (the "**Partnership**")

- and -

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated under the laws of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor ("**Opco**")

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act 2007* (Newfoundland and Labrador), and a wholly-owned subsidiary of Nalcor ("**NLH**")

- and -

<@>, a [type of entity and jurisdiction or statute of incorporation or formation], [*insert basis on which assignee is permitted*] (the "**Assignee**")

WHEREAS:

- A. Opco and the Partnership entered into the LIL Assets Agreement on [], 201 (the "**LAA**"); and
- B. Opco, NLH and the Partnership entered into the LIL Remedies Agreement on 201__ (the "**LRA**" and together with the LAA, the "**Assigned Agreements**");

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 Agreements” has the meaning set forth in the recitals;

“Assignee” means [*] an Affiliate of **[Opco/the Partnership] [or a Holder]**, a Qualified Assignee of the Assignor;

“Assigned Rights” means the Assigned Agreements and the **[Opco Rights][Partnership Rights]**;

“Assignor” means **[the Partnership/Opco or an Affiliate of the Partnership/Opco, as applicable]**;

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

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

“Consenting Parties” means **[Opco/the Partnership or if applicable as a result of prior assignments, specified Affiliates]** and NLH;

“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**” means [●]; [NTD: Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmission assets and contracts transferred to it the Effective Date is to be the date when all of those transfers are effective.]

“**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;

“LAA” has the meaning set forth in the recitals;

“LRA” has the meaning set forth in the recitals;

“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;

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“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**;

“Opco” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Opco Rights” has the meaning set forth in the LAA;

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

“Partnership” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Partnership Rights” has the meaning set forth in the LAA;

“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;

“Qualified Assignee” has the meaning set forth in the LAA;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“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; 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 a Qualified Assignee

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 Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights 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 Rights. 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 Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of Assigned Rights

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the Assigned Rights. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor are in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights subject to the terms and conditions herein, and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Section 13.1(d) or 13.2(d) of the LAA, as applicable, does not require consent to assignment.

2.5 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 2.5(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 2.7**.

2.6 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.6(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.

2.7 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.

2.8 Payment and Offset

- (a) Subject to **Section 2.8(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.

2.9 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 ●.

**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 Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary 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**][**Qualified Assignee**] of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

**ARTICLE 4
DISPUTE RESOLUTION PROCEDURE**

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 3 to the LAA (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:

- (a) To Assignor:

 [•]
- (b) To Assignee:

 [•]
- (c) To Consenting Parties:

 [•]

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 Assigned 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.

[The 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][the general partner; the general partner has authority to bind the Assignor].

[ASSIGNEE]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Assignee].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Partnership].

LIL ASSETS AGREEMENT

SCHEDULE 3

DISPUTE RESOLUTION PROCEDURE

**SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE**

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**SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE**

Section 1 Interpretation

1.1 Definitions

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

“**Agreement**” means the agreement to which this Schedule is attached;

“**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 by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

“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 Agreement.

2.3 Interim Measures

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

2.4 Mediator or Arbitrator as Witness

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

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by either Party requesting a review under this **Section 3** by Notice to the other Party (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 forth 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 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 any other agreement to which they are both parties, 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 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

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

Section 6 **Expert Determination Procedure**

6.1 **Referral for Expert Determination**

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 the Agreement, 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 forth 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 Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

LIL ASSETS AGREEMENT

APPENDIX A

TO

DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

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.

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- (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 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 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

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.

LIL ASSETS AGREEMENT

SCHEDULE 4

CONFIDENTIAL INFORMATION

**SCHEDULE 4
CONFIDENTIAL INFORMATION**

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SCHEDULE 4
CONFIDENTIAL INFORMATION

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

“Agreement” means the agreement to which this Schedule is attached;

“ATIPPA” means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

“Authorized Purpose” means a purpose associated with the rights and obligations set forth in the Agreement;

“ECA” means the *Energy Corporation Act* (Newfoundland and Labrador);

“Lender Recipient” has the meaning set forth in **Section 2.3**;

“Representatives” means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

“Schedule” means this **Schedule 4 - Confidential Information**;

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

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

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

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

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the LIL Assets Term (the “**Term**”), provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

- (a) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this Schedule or other obligation of confidentiality;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;

- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

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

Section 3 Acknowledgments

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

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

Section 4 Disclosures Required By Law

4.1 Opco and its Affiliates and the Partnership and its Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. The Parties acknowledge that Opco and its Affiliates and the Partnership and its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 The Parties hereby acknowledge and agree that the Confidential Information disclosed by the other Party is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to the other Party, as applicable. It is further acknowledged and agreed that each Party has represented to the other Party that the Confidential Information disclosed is treated consistently in a confidential manner by each of them and is customarily not provided to their competitors. Therefore, pursuant to s.5.4(1)(b) of the ECA, the Parties shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure, and be entitled to be represented and make arguments in support of non-disclosure.

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

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;
- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its

own information of like character, to ensure that the information will be afforded confidential treatment;

- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including Section 4.3, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Party and its Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding between the Parties or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

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

LIL ASSETS AGREEMENT

SCHEDULE 5

PARTNERSHIP STEP-IN AGREEMENT

**SCHEDULE 5
PARTNERSHIP STEP-IN AGREEMENT**

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STEP-IN AGREEMENT

THIS STEP-IN AGREEMENT is made effective the ___ day of _____, 2013 (the “**Effective Date**”).

BETWEEN:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner **LABRADOR-ISLAND LINK GENERAL PARTNER CORPORATION** (the “**Partnership**”)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as collateral trustee under the deed of trust and mortgage dated [●], (such deed of trust and mortgage, as changed and in effect from time to time, the “**Collateral Trust Deed**”), for and on behalf of the Senior Secured Bondholders (as defined therein) (the “**Security Trustee**”)

- and -

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor (“**Opco**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the Statutes of Newfoundland and Labrador, 2007, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

(each one of NLH and Opco shall be referred to as a “**Contracting Party**” and collectively as the “**Contracting Parties**”)

WHEREAS:

- A. The Partnership has entered into the LIL Assets Agreement made as of [●] with Opco (such agreement, as changed and in effect from time to time, any provisions thereof and/or the rights of the Partnership therein (as the context requires and/or so admits) collectively the “**LIL Assets Agreement**”);
- B. The Partnership has entered into the LIL Lease made as of [●] with Opco (and NLH for certain limited purposes) (such agreement, as changed and in effect from time to time, any

provisions thereof and/or the rights of the Partnership therein (as the context requires and/or so admits) collectively the “**LIL Lease**”);

- C. The Partnership has entered into the Transmission Funding Agreement made as of [●] with the Contracting Parties (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of the Partnership therein (as the context requires and/or so admits) collectively, the “**TFA**”);
- D. The Partnership has entered into the LIL Remedies Agreement made as of [●] with the Contracting Parties (such agreement, as changed and in effect from time to time, any provision thereof and/or any rights of the Partnership therein (as the context requires and/or so admits) collectively the “**LRA**” and together with the LIL Assets Agreement, the LIL Lease and the TFA, the “**Contracts**”); and
- E. Pursuant to the Collateral Trust Deed and various other security documents, the Security Trustee has been or will be granted Liens in all of the assets and rights of the Partnership, including the Contracts (collectively, the “**Security Interests**”).

NOW THEREFORE in consideration of the premises and the agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. Definitions

The words and expressions (capitalized or not), wherever used in this Agreement, or in any agreement supplemental or ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings ascribed thereto.

(a) General Definitions - Unless the context otherwise requires, in this Agreement:

“**Account Holder**” has the meaning set forth in the Collateral Trust Deed;

“**Acquiror**” has the meaning set forth in **Section 5(e)**;

“**Agent Party**” has the meaning set forth in **Section 5(d)**;

“**Business Day**” means any day excluding Saturday, Sunday or any other day which in the City of St. John’s, Newfoundland and Labrador, is a legal holiday or a day on which banks are authorized by Law or by local proclamation to close;

“**Collateral Trust Deed**” has the meaning set forth at the commencement hereof;

“**Contracts**” has the meaning set forth in **Recital D**;

“**Contracting Party**” and “**Contracting Parties**” have the meanings set forth at the commencement hereof;

“**Default Notice**” has the meaning set forth in **Section 5(d)**;

“**Financing Documents**” has the meaning set forth in the Collateral Trust Deed;

“**Law**” means all applicable provisions of laws, ordinances, codes, rules, regulations, orders, orders in council, directives, decrees, administrative orders, guidelines, policies of any governmental entity, as well as the applicable provisions of any treaty and any order and decree of any tribunal and arbitrator after the expiration of any appeal period;

“**Lien**” means (i) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation, (ii) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), including by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms, (iii) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and (iv) any agreement to grant any of the foregoing rights or interests;

“**LRA**” has the meaning set forth in **Recital D**;

“**NLH**” has the meaning set forth at the commencement hereof;

“**Opco**” has the meaning set forth in the commencement hereof;

“**Partnership**” has the meaning ascribed thereto at the commencement hereof;

“**Partnership Revenue Account**” means the account of Opco maintained with the Account Holder and bearing number [●];

“**Qualified Assignee**” has the meaning set forth in the LIL Assets Agreement;

“**Secured Obligations**” has the meaning set forth in the Collateral Trust Deed;

“**Security Interests**” has the meaning set forth in **Recital E**;

“**Security Trustee**” has the meaning set forth at the commencement hereof;

“**Senior Secured Bondholders**” has the meaning set forth in the Collateral Trust Deed; and

“**TFA**” has the meaning set forth in **Recital C**.

(b) Extended Meanings - To the extent the context so admits, in this Agreement the following words and expressions shall be given the extended meanings set forth opposite them:

an **“agreement”** - any agreement, oral or written, simple contract or specialty, bond, bill of exchange, indenture, instrument or undertaking;

“asset” - any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset;

a **“breach”** - any breach, default, event of default, or any equivalent or similar event however described under any agreement;

“cancel” - cancel, surrender, repudiate, disclaim, terminate or suspend;

“change” - change, modify, alter, amend, supplement, restate, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive;

“claim” - claim, claim over, cross-claim, counter-claim, defence, demand, liability, proceeding, judgment or order or award of any court, other governmental authority, arbitrator or other alternative dispute resolution authority;

a **“document”** - a written agreement, consent, waiver, certificate, notice or other written document or instrument;

a **“government”** - (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it;

“governmental authority” - any court, administrative tribunal, regulatory authority, government, union of nations or any agency or other authority of a government or union of nations;

“include” - include without limitation, and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters;

“losses and expenses” - losses, costs, expenses, damages, penalties and judgments and awards of any court or other governmental authority, arbitrator, mediator or other alternative dispute resolution authority, including any applicable awarded costs, and legal fees and disbursements on a solicitor and client basis;

“obligations” - indebtedness, obligations, promises, covenants, responsibilities, acts, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“person”** - an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a

trust, including a business trust, a corporation organized under the laws of any jurisdiction, a government or agency of a government or any other legal or commercial entity;

“proceeding” - any legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding;

“receiver” - a privately appointed or court appointed receiver or receiver and manager, and, except in the definition of “Agent Party”, an interim receiver, liquidator, trustee in bankruptcy, administrator, administrative receiver and any other like or similar official;

a **“registration”** - any notice to or filing, publication, recording or registration with any governmental authority having jurisdiction with respect to any specified person, transaction or event, or any of such person's assets;

“rights” - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities, recourses and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise;

a **“successor”** of a person (the **“relevant party”**) - (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates and (ii) any person to whom all or substantially all of the assets of the relevant party are transferred;

“written” and **“in writing”** - an original writing, a pdf or facsimile copy of a writing or an email.

2. Representations and Warranties

Each Contracting Party, for itself only, hereby represents, warrants, acknowledges and confirms to the Security Trustee, with the knowledge that the Security Trustee and the Senior Secured Bondholders are relying on such representations, warranties, acknowledgments and confirmations for the purpose of entering into the Collateral Trust Deed and the Financing Documents, that:

- (a) The Contracting Parties are corporations duly organized and validly existing under the laws of Newfoundland and Labrador and each of them are qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement and the Contracts;
- (b) each Contracting Party has the legal capacity and right to enter into this Agreement and the Contracts and do all acts and things and execute and deliver all documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms and conditions hereof and thereof;
- (c) each Contracting Party has taken all necessary action to authorize the execution and delivery of this Agreement and the Contracts, the creation and performance of its

obligations hereunder and thereunder as well as the consummation of the transactions contemplated hereunder and thereunder;

- (d) each Contracting Party has duly executed and delivered this Agreement and the Contracts;
- (e) none of the authorization, execution, delivery or performance of this Agreement or the Contracts by each Contracting Party, nor the consummation of any of the transactions contemplated hereby or thereby:
 - (i) requires any authorization to be obtained or registration to be made (except such as have already been obtained or made and are now in full force and effect and those not yet required);
 - (ii) conflicts with, contravenes or gives rise to any breach under (A) any of the articles (which, in the case of NLH, are the provisions of the *Hydro Corporation Act, 2007* (Newfoundland and Labrador), the *Energy Corporations Act* (Newfoundland and Labrador) or by-laws of either Contracting Party, (B) the provisions of any document or obligation to which either Contracting Party is a party or by which such Contracting Party or any of its assets are or may become bound or (iii) any Law;
 - (iii) has resulted or will result in the creation or imposition of any Lien upon any of the assets of either Contracting Party, other than Liens subordinated to the Security Interests;
- (f) each of this Agreement and each of the Contracts constitutes a valid and legally binding obligation of each Contracting Party enforceable against it in accordance with its terms, subject only to Laws relating to bankruptcy, insolvency, winding-up, dissolution, administration, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion;
- (g) each Contract is in full force and effect and has not been changed and there is no dispute (to the best of its knowledge) thereunder now existing, and after giving effect to the granting of the Security Interests by the Partnership to the Security Trustee in each Contract, and after giving effect to this Agreement by each Contracting Party, there exists no event or condition which would constitute a breach, or which, with the giving of notice or lapse of time or both, would have constituted a breach under the Contracts;
- (h) each:
 - (i) Contracting Party; and

- (ii) to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, the Partnership,

is in full compliance in all material respects with and has performed its obligations under the Contracts which are required to be complied with and/or performed to date;

- (i) each Contracting Party has no outstanding claims of a material nature against the Partnership in respect of the Contracts;
- (j) there are no existing circumstances which could give rise to a material breach by either Contracting Party or, to the best of the knowledge, information and belief of such Contracting Party, and after due inquiry, the Partnership, under either Contract; and
- (k) neither Contracting Party has delivered to or received from the Partnership, any notice purporting to cancel either Contract (other than the LIL Lease).

3. Benefits hereunder independent to those of the Partnership

Each Contracting Party hereby acknowledges and agrees that the rights of each Agent Party under this Agreement shall be independent to those of the Partnership under each Contract and may be enforced by such Agent Party independently from the Partnership.

4. Agent Party not bound to exercise rights

Each Contracting Party hereby acknowledges and agrees that, save as otherwise expressly agreed to in writing, nothing herein contained shall be construed or interpreted as obliging any Agent Party, nor shall any Agent Party be liable for the failure, to exercise any of the rights afforded to it hereunder or under the Collateral Trust Deed. Each Contracting Party hereby further acknowledges and agrees that no Agent Party shall be liable for any loss and expense incurred or suffered by such Contracting Party as a result of any delay by, or any failure of, such Agent Party to exercise any of, the rights afforded to such Agent Party hereunder or under the Collateral Trust Deed.

5. Consent to Liens and Subordination

In furtherance of the terms and conditions of the Contracts, each Contracting Party hereby expressly:

- (a) acknowledges and irrevocably consents to the Security Interests granted by the Partnership in favour of the Security Trustee in the Contracts and any future grant of any Security Interests by the Partnership in favour of the Security Trustee in the Contracts, and, in connection with any such creation of Security Interests, the filing or registration of any financing statements, registration forms, or any similar documents;

- (b) agrees that, save as is otherwise expressly agreed to in writing, no Agent Party shall incur any obligation of the Partnership or otherwise whatsoever to the Contracting Parties under the terms of the Contracts;
- (c) agrees that, save as is otherwise expressly agreed to in writing, any Agent Party shall have the right, but not the obligation, to perform any obligation required of the Partnership under the Contracts at any time. Nothing herein shall require any Agent Party to cure any breach by the Partnership of either Contract or to perform such obligation of the Partnership thereunder;
- (d) agrees that upon the Security Interests becoming enforceable, the Security Trustee, or any nominee or designee thereof, or any receiver of the Partnership or any receiver of the assets of the Partnership appointed by or on the application of the Security Trustee (the Security Trustee, any such nominee, designate or receiver shall be referred to herein as an “**Agent Party**”) shall, upon written notice (a “**Default Notice**”) to each Contracting Party, and in accordance with its respective interest, be entitled to enforce the Security Interests against the Contracts, including the right, subject to the LRA, to enforce and enjoy all of the rights that the Partnership has or may have under the Contracts to the same extent and in the same manner as if it were an original party thereto in the place of the Partnership. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Agent Party to pay any amounts that may be accrued or past due by the Partnership under the Contracts;
- (e) agrees that whether or not an Agent Party gives a Default Notice, an Agent Party may assign the Contracts to a third party that is a Qualified Assignee subject to the provisions of the Contracts (an “**Acquiror**”). Such an assignment to the Acquiror is conditional upon such Acquiror agreeing to observe and perform all of the Partnership's obligations under the Contracts arising after the date of such assignment. Each Contracting Party hereby acknowledges that it shall not have the right to require any such Acquiror to pay any amounts that may be accrued or past due by the Partnership under the Contracts;
- (f) upon any Agent Party completing such an assignment to an Acquiror, each Agent Party shall be released from any and all obligations that such Agent Party may have hereunder to perform the obligations of the Partnership to the Contracting Parties under the Contracts. Nothing in this Agreement, and neither the giving of a Default Notice nor any assignment pursuant to **Section 5(e)**, releases the Partnership from its obligations to the Contracting Parties under and in relation to the Contracts;
- (g) agrees that, except as provided in the Contracts, it shall not have any right to cancel or terminate the Contracts including in the event of any breach by the Partnership of the Contracts that is particular to the Partnership and that is not curable by the Security Trustee or any other Agent Party at such time, such as the insolvency, bankruptcy, general assignment for the benefit of creditors or the appointment of a

receiver of the Partnership and that the Contracts shall remain in full force and effect until all Secured Obligations are paid in full;

- (h) agrees to provide to the Security Trustee or any other Agent Party at such time, at the same time that any notice is provided to the Partnership of any breach of any Contract or of any proceedings under any Contract, the same notice that it provides to the Partnership. All notices to any Agent Party shall be in writing and shall be delivered to such Agent Party at the addresses set forth in **Section 18** or any other address confirmed to each Contracting Party from time to time; and
- (i) subordinates and postpones the payment of all amounts owing to it and security taken with respect to such amounts from time to time by the Partnership pursuant to the Contracts to the prior and indefeasible payment in full of all Secured Obligations.

6. Arrangements Regarding Payments

All payments to be made by a Contracting Party to the Partnership under a Contract shall be made, in lawful money of Canada, directly for deposit into the [~~*~~the Partnership Revenue Account~~*~~], and shall be accompanied by a notice from such Contracting Party stating that such payments are made under such Contract. The Partnership hereby authorizes and irrevocably directs each Contracting Party to make such payments as aforesaid and agrees such payment shall satisfy each Contracting Party's obligation to pay such amounts to the Partnership under the Contracts.

7. Communications from Contracting Parties

Until such time as an Agent Party notifies the Contracting Parties in writing of its exercise of rights under the Collateral Trust Deed, each Contracting Party shall continue to communicate directly with the Partnership with regard to its continuing obligations under the Contracts. Upon receipt by a Contracting Party of written instructions from an Agent Party pursuant to its exercise of rights under the Collateral Trust Deed, such Contracting Party agrees to and shall comply with and treat any and all written instructions received from such Agent Party as if they came directly from the Partnership.

8. Obligations of the Contracting Parties under the Contracts

Each Contracting Party acknowledges and agrees with the Security Trustee that neither this Agreement nor any Security Interests created by the Partnership in favour of the Security Trustee shall in any way lessen or relieve such Contracting Party from its obligation to observe, satisfy and perform each and every term, condition, other provision and obligation set forth in or required to be observed by such Contracting Party in order to fulfill its obligations under the Contracts or any obligations of such Contracting Party to the Partnership.

9. Assignments to other trustees, administrative agents

The Partnership and each Contracting Party agrees that the Security Trustee may assign the rights under this Agreement, in whole or in part, to any other trustee from time to time to the same extent, and on and subject to the same terms and conditions, as the Security Trustee may assign its rights under the Collateral Trust Deed without the consent of the Contracting Parties or the Partnership, and that each such assignee shall be entitled to rely on the representations, warranties, acknowledgements, confirmations, covenants and agreements of each of the Partnership and of each Contracting Party herein contained. All references to the Security Trustee in this Agreement shall be deemed to refer to the Security Trustee and/or to any such assignee, and all its actions permitted to be taken by the Security Trustee under this Agreement may be taken by any such assignee. The Security Trustee shall provide notice of any such assignment to each Contracting Party.

10. Commitment in the event of a Step-In

Notwithstanding anything to the contrary in this Agreement, the Security Trustee agrees that it and any Agent Party shall be bound by Sections 2.5(c), (d), (e), (f), (g) and (h) of the LRA, and such sections shall be enforceable by the Contracting Parties, in each case as if the Security Trustee and any Agent Party was a signatory to the LRA.

11. Further Assurances

Each of the parties hereto agrees to do all such other acts and things and to execute all such other documents as may be reasonably required to give effect to the purpose and intent of this Agreement.

12. Grammatical variations, plural, gender, headings

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined or given extended meanings shall be construed in like manner. Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Agreement.

13. Agreements

Each reference in this Agreement to any document (including this Agreement, the Contracts and any other defined term that is a document) shall be construed so as to include such document (including any attached schedules, appendices and exhibits) and each change thereto, made at or before the time in question. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Recital, Article, Section, subsection, paragraph, subparagraph, clause or other portion of this Agreement.

14. Severability

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable. Each Contracting Party and the Partnership shall, at the request of the Security Trustee or any Agent Party, negotiate in good faith with the requesting party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by applicable Law.

15. Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the Province of Newfoundland and Labrador, including the federal Laws of Canada applicable therein, but excluding any conflict of law rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to any matter arising under, by reason of or otherwise in respect of this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or email in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

17. Conflict

If there is any inconsistency or conflict between this Agreement and the Contracts, this Agreement shall govern.

18. Notices

Any demand, notice or other communication to be made or given hereunder ("**Notice**") shall be in writing and may be made or given by mailing it by prepaid registered mail or by transmitting it by facsimile addressed to the respective parties as follows:

- (a) If to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.

500 Columbus Drive
P.O. Box 13000
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) If to the Security Trustee:

Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario
M5J 2Y1
Attention: Manager, Corporate Trust Services
Fax: 416-981-9777

(d) If to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

(e) If to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL
A1B 0M5
Attention: Chief Executive Officer
Fax: (709) 737-1782

(f) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

or to such other address, email or facsimile number as may be designated by notice given by any party to the other. Any Notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email or facsimile, will be conclusively deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by facsimile.

19. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Partnership, the Security Trustee, each Agent Party and each Contracting Party and their respective successors and permitted assigns; provided that, the Contracting Parties shall not assign or transfer any of their respective rights hereunder without the prior written consent of the Security Trustee and each Agent Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, by
its general partner, LABRADOR-ISLAND LINK
GENERAL PARTNER CORPORATION**

Per:

Name:

Title:

Per:

Name:

Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA,
as Security Trustee**

Per:

Name:

Title:

Per:

Name:

Title:

**NEWFOUNDLAND AND LABRADOR HYDRO,
as a contracting party**

Per:

Name:

Title:

Per:

Name:

Title:

LABRADOR-ISLAND LINK OPERATING CORPORATION

Per:

Name:

Title:

Per:

Name:

Title:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP

and

LABRADOR-ISLAND LINK OPERATING CORPORATION

and

NEWFOUNDLAND AND LABRADOR HYDRO

LIL LEASE

November 29, 2013

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LIL LEASE

THIS LIL LEASE is signed the 29th day of November, 2013.

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner Labrador-Island Link General Partner Corporation (the "**Partnership**")

– and –

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor ("**Opco**")

– and –

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor ("**NLH**")

WHEREAS:

- A. an agreement (the "**LIL Assets Agreement**") of even date herewith between the Partnership and Opco provides for the execution and delivery of this Agreement by the Partnership and Opco, subject only to Opco and the other parties thereto having entered into the TFA; and
- B. Opco and the other parties thereto have entered into the TFA.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants 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:

"**Acquiror**" has the meaning set forth:

- (a) in the case of Opco, in the Opco Step-In Agreement; or
- (b) in the case of the Partnership, in the Partnership Step-In Agreement;

“Actual Annual Rent” has the meaning set forth in **Section 3.3(c)**;

“Actual Quarterly Rent” has the meaning set forth in **Section 3.3(a)**;

“Actual Quarterly Rent Invoice” has the meaning set forth in **Section 3.3(a)**;

“Adequacy” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria and taking into account scheduled and unscheduled outages of system elements;

“Additional Debt” means (a) an operating line of credit up to a maximum principal amount of \$10,000,000, and (b) Debt for Borrowed Money to finance Cost Variances prior to Commissioning and Sustaining Costs after Commissioning;

“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;

“Agent Party” has the meaning set forth:

- (a) in the case of Opco, in the Opco Step-In Agreement; or
- (b) in the case of the Partnership, in the Partnership Step-In Agreement;

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

“Annual Depreciation on the LIL” has the meaning set forth in the LIL LP Agreement;

“Annual Depreciation on Sustaining Costs” means, in any Operating Year, the Undepreciated Sustaining Costs divided by the remaining Service Life of the LIL, averaged as appropriate consistent with the then current regulatory practice in NL;

“Annual Maintenance Plan” means an annual maintenance plan for the LIL prepared by Opco and Approved by the JOC setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, and containing such other information as may be required by the JOC, acting reasonably;

“Annual O&M Budget” means the annual budget for O&M Activities related to the LIL prepared by Opco for an Operating Year based on the Annual Maintenance Plan for such Operating Year and the O&M Budget, and including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“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;

“Approved by the JOC” means approved by a decision of the JOC made in accordance with Article 3 of the JOA, and **“Approves”**, **“Approved”** and **“Approval”** in relation to the JOC have correlative meanings;

“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;

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 KV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

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

“CFLCo” means Churchill Falls (Labrador) Corporation, Limited, a corporation incorporated pursuant to the laws of Canada, and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River, in the vicinity of Churchill Falls, NL;

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

“Capital Account” has the meaning set forth in the LIL LP Agreement;

“Choses in Action” means all choses in action held by the Partnership in connection with an activity or undertaking involving the LIL or any part of it and which are assigned to Opco under the provisions of this Agreement, including the LIL Real Property Rights, the Contracts, and all Permits that are property at law;

“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;

“Collateral Agent” means Toronto Dominion Bank, in its capacity as collateral agent under the Financing Documents, and includes any successor thereof in such capacity;

“Commissioning” means the testing activities required to demonstrate the LIL is ready to transmit Energy and Capacity in accordance with the LIL Project Description, and **“Commission”** and **“Commissioned”** have a correlative meaning;

“Commissioning Date” means the date on which all of the following has occurred:

- (a) the Commissioning has been completed;
- (b) the NLSO has accepted in writing that the Commissioning has been completed; and
- (c) the Financing Parties have accepted in writing that the Commissioning has been completed.

“Confidential Information” means, with respect to the LIL Project and the LIL:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and
- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contains or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“Contaminant” means:

- (a) any matter, chemical, material, substance or condition that are defined, listed, prohibited, controlled or regulated by Environmental Laws or by an Authorized Authority or any other formulation intended to define, list, prohibit, control,

regulate or classify substances by means of deleterious or harmful or potentially deleterious or potentially harmful properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity or toxicity;

- (b) any contaminant or pollutant or any substance that when released to the natural environment causes or is likely to cause harm, adverse impact, damage or degradation to or impairment of the environment, risk to or an adverse effect on human safety or health, injury or material discomfort to any Person or interference with the reasonable enjoyment of life or property or the normal conduct of business; and
- (c) petroleum or petroleum products, fertilizer, radioactive materials, asbestos in any form that is or could be friable, radon gas, transformers or other equipment that contains polychlorinated biphenyls;

“Contracts” means all agreements or commitments of the Partnership and Opco in connection with an activity or undertaking forming part of the LIL or procured in connection with Development Activities, including the right to schedule transmission service over the LIL and to connect the LIL with other transmission facilities, but excluding for certainty the LIL Real Property Interests and the LIL Real Property Rights;

“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 a correlative meaning);

“Cost Variances” has the meaning set forth in the Financing Documents;

“DER” means the Debt for Borrowed Money of the Partnership compared to the value of the Capital Accounts of the Partnership, expressed as a ratio;

“Debt for Borrowed Money”, with respect to any Person means, without duplication, such Person’s:

- (a) obligations for borrowed money;
- (b) obligations under letters of credit or letters of guarantee or obligations to financial institutions who issued such letters of credit or letters of guarantee for the account of such Person;

- (c) obligations under banker's acceptances, depository bills or depository notes (as these latter two expressions are defined in the *Depository Bills and Notes Act* (Canada));
- (d) Purchase Money Obligations;
- (e) obligations evidenced by bonds, debentures or promissory notes; and
- (f) obligations under guarantees with respect to obligations referred to in **Section (a)** through **(e)** of this definition inclusively;

“Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the LIL in accordance with the LIL Project Description, and to Commission the LIL, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, the products of such activities and undertakings, and the resolution of all Claims and disputes related thereto;

“Direct Claim” has the meaning set forth in **Section 13.3(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of such other Party;

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

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

“Distributions” has the meaning set forth in the LIL LP Agreement;

“Effective Date” means the Commissioning Date;

“Emera” means Emera Inc., a company incorporated pursuant to the laws of NS, and includes its successors;

“Encumbrance” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature or kind whatsoever;

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

“Environmental Laws” means all present and future environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, by-laws, regulations, rules, policies, guidelines, interpretations, decisions, approvals, consents, orders and directives of any Authorized Authority relating to the protection of the environment, people or property, and governing (a) the presence, management, remediation, use, storage, treatment, generation, transportation, processing, handling, production or disposal of Contaminants,

including air pollution and water pollution, and (b) the use, occupation or maintenance of the LIL or the LIL Land Area;

“Estimated Annual Rent” has the meaning set forth in **Section 3.2(a)**;

“Estimated Annual Rent Notice” has the meaning set forth in **Section 3.2(a)**;

“Estimated Monthly Rent” has the meaning set forth in **Section 3.2(a)**;

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

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

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements, and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

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

“Fiscal Year” has the meaning set forth in the LIL LP Agreement;

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control and without fault or negligence of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or inadvertent action or failure to act causing material physical damage to, or materially impairing the operation of, or access to the MF Plant, the LIL, the LTA or the NL Transmission System, or any machinery or equipment comprising part of, or used in connection with the MF Plant, the LIL, the LTA or the NL Transmission System;
- (e) a revocation, amendment, failure to renew or other inability to obtain or the revocation, failure to renew or other inability to maintain in force any order, permit, licence, certificate or authorization from any Authorized Authority that is required with respect to the O&M Activities, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the party seeking or holding such order, permit, licence, certificate or authorization;
- (f) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of Energy or Capacity that is required by the NLSO for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices; and
- (g) any event or circumstance affecting an O&M Contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that such O&M Contractor is relieved from the performance of its obligations under a contract affecting a Party;

but none of the following shall be a Force Majeure:

- (h) lack of finances or changes in economic circumstances of a Party;
- (i) if the event relied upon results from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (j) any delay in the settlement of any Dispute;

“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;

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

“**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;

“HSE” means health, safety and the environment;

“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);

“**Head Lease**” has the meaning set forth in **Section 2.1(b)**;

“**Holder**” means “holder” as defined in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

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

“**Indemnified Party**” has the meaning set forth in **Section 13.3(a)**;

“**Indemnitor**” has the meaning set forth in **Section 13.3(a)**;

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

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

- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *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;

“Intellectual Property Rights” means the rights of the Partnership and Opco in or to the following:

- (a) any and all proprietary rights everywhere in the world provided under (i) patent law, (ii) copyright law (including moral rights), (iii) trade-mark law, (iv) design patent or industrial design law, (v) semi-conductor chip or mask work as integrated circuit topography law, or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide rights in the Confidential Information, the LIL Project Data, and in trade-marks, ideas, formulae, algorithms, concepts, inventions, processes, show-how or know-how generally, or the expression or use of the Confidential Information, the LIL Project Data, or any such trade-marks, ideas, formulae, algorithms, concepts, inventions, processes, show-how or know-how;
- (b) any and all applications, registrations, licences, sub-licences, franchises, agreements or any other evidence of a right in any of the foregoing; and
- (c) all (i) licences and waivers and benefits of waivers or, (ii) future income and proceeds from, and (ii) rights to damages and profits by reason of the infringement or violation of any of the intellectual property rights set out in **Sections (a) and (b)** of this definition;

“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 LIL or the Maritime Link;

“JOA” means the Joint Operations Agreement between Nalcor and Emera dated July 31, 2012, relating, among other things, to the operation and maintenance of the LIL;

“JOC” means the Joint Operations Committee established pursuant to the JOA;

“JOC-LIL” has the meaning set forth in the LIL Assets Agreement;

“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;

“LIL” means equipment and facilities comprising a HVdc transmission line and all related components, including converter stations, synchronous condensers, and terminal, telecommunications and switchyard equipment, constructed between the LTA and the Island Interconnected System including,

- (a) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent;

- (b) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission lines; and
- (c) all mechanical, electrical and other systems and other technology installed under or upon any of the foregoing;

“LIL LP Agreement” means the agreement between Labrador-Island Link General Partner Corporation, as general partner, and Labrador-Island Link Holding Corporation, as limited partner, dated July 31, 2012, which establishes the Partnership;

“LIL Assets Agreement” has the meaning set forth in the recitals of this Agreement;

“LIL Assets and Rights” means all real and personal property (tangible and intangible), contracts, choses in action and assets and undertakings held by the Partnership in connection with an activity or undertaking involving the LIL or any part of it, including the Contracts, Intellectual Property Rights, LIL Project Data, LIL Real Property Interests, LIL Real Property Rights, LIL Tangible Personal Property, Transmission Capability and Permits;

“LIL Land Area” means all land, including land that is foreshore and land covered by water, that can be used or occupied under one or more of the LIL Real Property Interests or one or more of the LIL Real Property Rights, including,

- (a) any such land that is occupied by a building or other structure used in connection with the LIL;
- (b) the air space located above any such land that is or may be occupied either permanently or from time to time by tangible personal property (whether or not constituting an attachment) forming part of the LIL; and
- (c) the sub-soil located below any such land that is or may be occupied either permanently or from time to time by tunnels, drill holes, pipes, conduits, cables, wires, other structures or tangible personal property (whether or not constituting an attachment) or excavations, forming part of the LIL;

“LIL Lease Term” has the meaning set forth in **Section 11.1**;

“LIL Operations Matters” has the meaning set forth in **Section 4.3**;

“LIL Project Data” means all data, documents, reports, analysis, tests, specifications, charts, plans, drawings, ideas, schemes, correspondence, communications, lists, manuals, technology, technique, methods, processes, services, routines, systems, procedures, practices, operations, modes of operations, know-how, trade or other secrets, contracts, financial information, engineering reports, environmental reports, field notes, sketches, photographs, computer programs, records or software (in both source code and object code form), specifications, models or other information resulting from Development Activities

and the Opco Business, and includes the media on which such data and information is stored, obtained or received by either Party;

“LIL Project Description” means a compilation of the fundamental engineering criteria, data and components on the basis of which the LIL is to be constructed as set forth in **Schedule 1**;

“LIL Real Property Interests” means all interests in land that are held by the Partnership in connection with an activity or undertaking involving the LIL or any part of it, including interests over, under or in respect of land that is foreshore and land covered by water, freehold and leasehold interests and easements appurtenant thereto, options and Statutory Easements;

“LIL Real Property Rights” means all rights to or for the use of or in connection with land, including land that is foreshore and land covered by water, which are not, in law, interests in land, that are held by the Partnership or Opco or by any other Person for the benefit of either of them, respecting or in connection with an activity or undertaking involving the LIL or any part of it, and including licences, permits and permissions;

“LIL Remedies Agreement” means the agreement of even date herewith among the Partnership, Opco and NLH setting forth certain specific remedies associated with this Agreement and the TFA;

“LIL Tangible Personal Property” means all tangible personal property held by the Partnership or Opco in connection with an activity or undertaking involving the LIL or any part of it so long as such property is not, in law, a fixture to any LIL Land Area, including all replacements, modifications, accessions and additions thereto and any tangible personal property that is held by the Partnership or Opco under a lease of personal property in connection with an activity or undertaking involving the LIL or any part of it;

“LIL Taxes” means all taxes, rates, duties, charges and assessments, including municipal taxes, school taxes, local improvement rates and other charges of whatever kind or nature, whether general, special, ordinary or extraordinary, which now or in the future are, shall or may be levied, rated, charged or assessed against, in respect of or in relation to the LIL, the LIL Assets and Rights or the LIL Land Area or any part thereof or structures, machinery, equipment, facilities and other property of any nature whatsoever situate on or in the LIL Land Area, or against the Partnership or Opco in respect of any of the same, and including taxes which may be incurred by or imposed upon the Partnership in lieu of any of the foregoing, whether such taxes, rates, duties, charges and assessments are charged by any federal, provincial, municipal, regional, school or other authority having jurisdiction, but excluding capital gains taxes, corporate taxes, income taxes, capital taxes, excess profit taxes, HST and any other taxes personal to the Partnership;

“LTA” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant and the LIL;

“LTAMP” means a long term asset management plan describing and quantifying the O&M Activities for each Operating Year in sufficient detail to determine the estimated annual Operating and Maintenance Costs and Sustaining Costs, and including:

- (a) a description of each activity, including at a minimum routine annual O&M Activities, anticipated Sustaining Activities, and retirements which do not occur annually;
- (b) the expected year of occurrence of each such activity; and
- (c) estimates of the annual costs applicable to each such activity;

“Labrador Transco” means Labrador Transmission Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

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

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

“MF Plant” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be owned and operated by Muskrat;

“MPPA” means the Multi-Party Pooling Agreement to be entered into between the NLSO and the owners or operators of transmission facilities comprising the NL Transmission System pursuant to which the NLSO shall exercise operational control of, and provide transmission service over, the NL Transmission System;

“MW” means megawatt;

“MWh” means MW hour;

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

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

“Muskrat” means Muskrat Falls Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“NL” means the Province of Newfoundland and Labrador;

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

“**NLH**” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**NLSO**” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH responsible for the safe and reliable operation of the Bulk Electric System or a functionally separate division of NLH performing this function, and includes any of its successors;

“**NL Transmission System**” means electricity transmission assets in NL with a voltage level greater than or equal to 230 KV to be pooled under the MPPA;

“**NS**” means the Province of Nova Scotia;

“**Nalcor**” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“**Nalcor LP**” means Labrador-Island Link Holding Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**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-Freehold Interests**” means the Statutory Easements and leases included in the LIL Real Property Interests that are subject to **Sections 2.1(b) and (c)**;

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

“**O&M Activities**” means all activities and undertakings performed by or on behalf of Opco after the Commissioning Date that are required to operate, maintain and sustain the LIL in accordance with Good Utility Practice, including administration and the replacement or overhaul of major components which do not extend the Service Life and, for greater certainty, includes Sustaining Activities;

“**O&M Budget**” means the budget prepared by Opco for the LIL based on the LTAMP and setting forth the Operating and Maintenance Costs and Sustaining Costs required to be made for each Operating Year during the LIL Lease Term, including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“O&M Contract” means a contract to perform work or provide services, equipment, materials, facilities or supplies forming part of or procured in connection with O&M Activities;

“O&M Contractor” means a Person who enters into an O&M Contract;

“O&M Standards” means the standards or requirements established or adopted and Approved by the JOC for the operation and maintenance of the LIL in accordance with Good Utility Practice for a long-term, low cost, reliable transmission facility, including monitoring and reporting on asset performance, frequency and scope of major inspections, applicable industry standards to apply in asset operation and maintenance, completion of the LTAMP, and the maintenance of appropriate critical spares, and includes standards or criteria established by the Standards Authority which are applicable to the LIL;

“Opco” has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Opco Affiliate Assignee” means an Affiliate of Opco to which all of the Opco Rights are assigned in accordance with the provisions of this Agreement;

“Opco Business” means all the activities and work associated with the use, operation, maintenance, repair, alteration, replacement and rehabilitation of the LIL, and the decommissioning and removal of the LIL if applicable, during the LIL Lease Term;

“Opco Default” has the meaning set forth in **Section 12.1**;

“Opco Indemnified Party” has the meaning set forth in **Section 13.2**;

“Opco Rights” has the meaning set forth in **Section 16.2(a)**;

“Opco Step-In Agreement” means the Step-In Agreement relating to Opco in the form attached as Schedule 5 to the TFA;

“Operational Control” means the authority to perform, direct or authorize security monitoring, adjustment of transmission resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for Reliability, planning assessments, coordination with external control area operators, voltage reductions and load shedding;

“Operating and Maintenance Costs” means, without duplication, all costs and expenses incurred for operation and maintenance of the LIL in accordance with this Agreement after the Commissioning Date, including costs of O&M Activities which are not Sustaining Activities, administration costs for Opco, any Taxes payable by or on behalf of Opco or in respect of amounts payable to Opco (including for greater certainty, any Taxes payable by Opco and required to be withheld by a Person on the payment of an amount to Opco), net of any such Taxes which are recovered, but grossed up and adjusted to the extent necessary so that the amount of any amounts payable to Opco which are retained by Opco, net of any

such Taxes, shall equal the amount which Opco would have retained if such Taxes were not payable by or on behalf of Opco or in respect of amounts payable to Opco, any costs and expenditures related to insurance, including any deductibles, any amount payable on account of a penalty imposed by Applicable Law or contract, any amount payable on account of a judgment rendered against Opco, and expressly excluding in all instances Rent and any costs, expenses or other amounts included in Rent;

“Operation and Maintenance Manual” means a document or collection of documents describing the LIL Project Description and each of the major components of the LIL, the design engineer’s recommendation for operating procedures and parameters, routine preventative maintenance, HSE procedures and periodic inspections, and containing references to each original equipment manufacturers manual for operating and maintenance of their provided equipment, spare parts requirements, and special tools and equipment;

“Operating Year” means (a) a calendar year during the LIL Lease Term, except that the first operating year will commence on the Commissioning Date and end on December 31 of the calendar year in which such date occurs, and the last operating year will end on the date of termination or expiry of the LIL Lease Term, or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

“PUB” means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

“Paid in Full” means in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment to such Person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

“Parties” means the Partnership, Opco and NLH, and **“Party”** means one of them;

“Partners” has the meaning set forth in the LIL LP Agreement;

“Partnership” has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Partnership Affiliate Assignee” means an Affiliate of the Partnership to which all of the Partnership Rights are assigned in accordance with the provisions of this Agreement;

“Partnership Default” has the meaning set forth in **Section 12.3**;

“Partnership Indemnified Party” has the meaning set forth in **Section 13.1**;

“Partnership Rights” has the meaning set forth in **Section 16.1(a)**;

“Partnership Step-In Agreement” means the step-in agreement relating to the Partnership in the form attached as Schedule 5 to the LIL Assets Agreement;

“Permits” means permits, licences, Regulatory Approvals and permissions held by the Partnership in connection with Development Activities or otherwise held by the Partnership or Opco in connection with an activity or undertaking involving the LIL or any part of it but, for greater certainty, excluding LIL Real Property Rights;

“Permitted Encumbrances” means:

- (a) liens or other encumbrances imposed or permitted by Applicable Law such as carriers’ liens, warehousemen’s liens, builders’ liens and other liens or other charges of a similar nature, provided such liens and other charges relate to obligations not due or delinquent;
- (b) undetermined or inchoate liens and other encumbrances incidental to Development Activities which have not at such time been filed pursuant to Applicable Law or which, if filed, relate to obligations not due or delinquent or the validity of which is being contested at the time in good faith by appropriate proceedings diligently conducted, and such inchoate liens and other encumbrances that do not cause a material adverse effect on the Parties’ interests in the LIL;
- (c) liens for Taxes, LIL Taxes, assessments, duties, fees, premiums, imposts, levies and other charges imposed by any Authorized Authority that are not at such date due or delinquent or the validity of which is being contested at the time in good faith by appropriate proceedings diligently conducted and there is no imminent risk of forfeiture;
- (d) public and statutory obligations and obligations under a Statutory Easement which are not due or delinquent or the validity of which is being contested at the time in good faith by appropriate proceedings diligently conducted and such obligations do not cause a material adverse effect on the Parties’ interests in the LIL;
- (e) permits issued pursuant to Section 55(4) of the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);
- (f) encumbrances charging the LIL Real Property Interests or having priority over such interests or any of them upon the acquisition thereof by the Partnership;
- (g) security related to the Financing Documents; and
- (h) security granted for Additional Debt;

“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;

“Prepaid Rent” means that portion of Rent paid by Opco to the Partnership in advance of the Operating Year in respect of which it will otherwise be due;

“Prepaid Rent Notice” has the meaning set forth in **Section 3.6(a)**;

“Prepaid Rent Reserve Account” means a reserve account established by the Partnership to hold Prepaid Rent;

“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;

“Purchase Money Obligations” means, with respect to any Person, any indebtedness assumed as part of, or issued or incurred in respect of, the cost of acquisition, including by way of conditional sales contract or leasing by way of a capital lease, of any property (including shares of capital stock) or of the cost of construction, improvement or extension of any property acquired, constructed, improved or extended or leased by way of a capital lease, which indebtedness existed at the time of acquisition, construction, improvement or extension or was created, issued, incurred, assumed or guaranteed contemporaneously with the acquisition, construction, improvement or extension or leasing by way of a capital lease or within 90 days after the completion thereof and includes any extension, renewal or refinancing of any such indebtedness if the amount thereof, outstanding on the date of such extension, renewal or refinancing is not increased, it being expressly understood that Purchase Money Obligations shall not include any trade payables incurred in the ordinary course of business and for the purpose of carrying on same or any indebtedness incurred in connection with any sale and leaseback transaction;

“Qualified Assignee” means a Person which is:

- (a) an administrative or security agent of a Financing Party;
- (b) with respect to the Opco Rights, an Affiliate or Affiliates of Opco, or a Holder, provided
 - (i) Opco and such Affiliate(s) or Opco and such Holder, as applicable, enter into an agreement with the Partnership substantially in the form of **Schedule 2**; and
 - (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of this Agreement, the MPPA, the LIL Remedies Agreement, the TFA and all of Opco’s right, title and interest in the LIL Assets and Rights; and

- (c) with respect to the Partnership Rights, an Affiliate or Affiliates of the Partnership, or a Holder, provided
 - (i) the Partnership and such Affiliate(s) or the Partnership and such Holder, as applicable, enter into an agreement with Opco substantially in the form of **Schedule 2**; and
 - (ii) there is a concurrent assignment to such Affiliates(s) or such Holder of this Agreement, the MPPA, the LIL Remedies Agreement, the TFA and all of the Partnership's right, title and interest in the LIL Assets and Rights;

"Qualified Partner" has the meaning set forth in the LIL LP Agreement;

"Quarter" means a calendar quarter (or portion thereof, as applicable) in an Operating Year;

"RROE" has the meaning set forth in the LIL LP Agreement, and as determined in accordance with **Section 3.9**;

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

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

"Refinance" means to extend, renew or refinance any indebtedness where the amount of such indebtedness outstanding on the date of such extension, renewal or refinancing is not increased;

"Regular Business Hours" means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

"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;

"Releasing" means discharging, spraying, abandoning, depositing, spilling, leaking, seeping, pouring, emitting, dumping and placing;

"Reliability" means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security;

"Reliability Standards" means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

"Rent" means for each Operating Year, an annual amount equal to:

- (a) applicable operating expenses to administer the Partnership calculated on an annual basis; plus

- (b) Annual Depreciation on the LIL (prorated if necessary); plus
- (c) Annual Depreciation on Sustaining Costs (prorated if necessary); plus
- (d) the Tax Adjustment Amount calculated on an annual basis; plus
- (e) any Taxes payable by the Partnership (excluding any Taxes which are or will be included in the Tax Adjustment Amount but including, for greater certainty, any Taxes payable by the Partnership and required to be withheld by Opco on the payment of Rent), grossed up to the extent necessary so that the amount of Rent retained by the Partnership, net of any such Taxes, shall equal the amount of the Rent the Partnership would have retained if such Taxes were not payable by the Partnership; plus
- (f) annual return on the Undepreciated Capital Asset and the Undepreciated Sustaining Costs,
 - (i) calculated as a percentage, that is equal to:
 - (A) the actual annual cost of the debt owed by the Partnership as a percentage, being interest expense divided by the debt principal value, averaged as appropriate; plus
 - (B) the RROE applicable from time to time, averaged as appropriate and subject to a minimum value to achieve the debt service coverage ratio agreed in the Financing Documents;both weighted according to the DER; multiplied by
 - (ii) the sum of the Undepreciated Capital Asset plus Undepreciated Sustaining Costs; plus
- (g) annual recovery of cost of capital (without duplication) associated with Reserves as determined by the GP or required by a Restrictive Agreement; plus
- (h) without duplication, any amount payable by the Partnership arising from an indemnity obligation set forth in the Financing Documents; less
- (i) any Prepaid Rent paid and attributable to such Operating Year,

all averaged as appropriate consistent with the then current regulatory practice in NL;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

“Reserves” has the meaning set forth in the LIL LP Agreement;

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

“Retired Limited Partner” has the meaning set forth in the LIL LP Agreement;

“Security” means the ability of an electrical system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

“Service Life” means the period of time immediately following the Commissioning Date, as designated by an Authorized Authority, from time to time, during which the LIL can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LIL Project Description;

“Standards Authority” means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the LIL;

“Statutory Easement” has the meaning attributed to it by, and grants to a Holder the rights set forth in, the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador) and includes, for greater certainty, any property or assets located, constructed or erected upon or affixed to the land encumbered by a Statutory Easement by or on behalf of the Holder of it;

“Sustaining Activities” means, with respect to O&M Activities, those activities and undertakings of a capital nature which Opco determines after the Commissioning Date are necessary to sustain the LIL in proper operating condition during its Service Life;

“Sustaining Activity Contract” means a contract to perform work or provide services, equipment, materials, facilities or supplies forming part of or procured in connection with Sustaining Activities;

“Sustaining Costs” means the costs incurred as a result of Sustaining Activities, including an allowance for funds used during construction consistent with the then current regulatory practice in NL;

“TFA” means the agreement of even date herewith among NLH, Opco and the Partnership relating, among other things, to the recovery from NLH of costs of the LIL incurred by Opco and the Partnership;

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

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or

measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“**Tax Adjustment Amount**” has the meaning set forth in the LIL LP Agreement;

“**Tax Adjustment Amount True-Up**” has the meaning set forth in the LIL LP Agreement;

“**Third Party Claim**” has the meaning set forth in **Section 13.3(b)**;

“**Transmission Capability**” means the ability to transmit Energy across a set of transmission facilities and, in the case of the LIL, means the ability of the LIL to transmit Energy between the LTA and the Island Interconnected System near Soldiers Pond on the Avalon Peninsula;

“**Undepreciated Capital Asset**” has the meaning set forth in the LIL LP Agreement;

“**Undepreciated Sustaining Costs**” means, in any Operating Year, the accumulated Sustaining Costs at the end of such Operating Year plus Reserves associated with Sustaining Costs less accumulated Annual Depreciation on Sustaining Costs; and

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**”, “**Section**”, “**Schedule**” or “**Appendix**” followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (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 GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement 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 Effective Date, 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 set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

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

- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.

- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 10**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Effectiveness of Agreement

Notwithstanding the execution of this Agreement by the Parties, the provisions of this Agreement shall only become effective on the Effective Date.

1.6 **Schedules**

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

Schedule 1 - LIL Project Description

Schedule 2 - Form of Assignment

Schedule 3 - LIL Land Area

Schedule 4 - Statutory Easements

Schedule 5 - LIL Tangible Personal Property

Schedule 6 - Dispute Resolution Procedure

Schedule 7 - Confidential Information

ARTICLE 2
LEASE, LICENSE AND ASSIGNMENT

2.1 **Lease**

In consideration of the Rent, covenants and agreements hereinafter reserved and contained to be paid, observed and performed by Opco, the Partnership hereby:

- (a) demises and leases to Opco each LIL Land Area to which the Partnership has freehold title as described in **Schedule 3** for the LIL Lease Term;
- (b) demises and subleases to Opco each LIL Land Area that is held by the Partnership under a lease ("**Head Lease**") as described in **Schedule 3** for the LIL Lease Term (provided that if the initial term of any Head Lease is not at least one day longer than the LIL Lease Term, the demise and sublease hereunder shall be for the shorter of the LIL Lease Term and the term of such Head Lease, as the same may be extended or renewed, less one day);
- (c) demises and leases to Opco each Statutory Easement (including exclusive use and possession to the extent granted by the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador), that is included in the LIL Real Property Interests as described in **Schedule 4** for the LIL Lease Term (provided that if the initial term of any Statutory Easement is not at least one day longer than the LIL Lease Term, the lease hereunder shall be for the shorter of the LIL Lease Term and the term of such Statutory Easement, as the same may be extended or renewed, less one day); and
- (d) leases to Opco the LIL Tangible Personal Property as described in **Schedule 5** for the LIL Lease Term.

2.2 Assignment of Related Rights

- (a) In further consideration of the Rent, covenants and agreements hereinafter reserved and contained to be paid, observed and performed by Opco, and only for the purpose of allowing Opco to fully enjoy and use the assets leased and subleased under **Section 2.1**, during the LIL Lease Term, the Partnership hereby:
- (i) assigns and transfers to Opco (A) the Contracts of the Partnership, (B) the Permits; (C) the LIL Real Property Rights, and (D) the LIL Project Data, that are held by the Partnership; and
 - (ii) grants to Opco a royalty free, non-revocable, exclusive as against the Partnership only, worldwide, licence and right to use the Intellectual Property Rights, that are held by the Partnership,

provided however that upon the expiry of the LIL Lease Term and the expiry of the licence referred to in **Section 2.2(a)(ii)**, Opco shall be obliged and hereby agrees to (A) reassign and transfer to the Partnership (i) the Contracts, (ii) the Permits, (iii) the LIL Real Property Rights, and (iv) the LIL Project Data, and (B) release and reconvey to the Partnership the licence and right to use the Intellectual Property Rights, all as set out in **Section 11.3(a)**.

- (b) For greater certainty, the Partnership agrees that Opco shall have control of the Transmission Capability of the LIL and Operational Control over the LIL for the LIL Lease Term.

2.3 Other Rights and Interest

- (a) If the Partnership, after the Effective Date, holds or acquires any LIL Real Property Interests or LIL Tangible Personal Property that is not subject to **Section 2.1**, the Partnership shall lease such property to Opco by instrument supplemental to this Agreement on the terms herein set forth *mutatis mutandis*, or if such property cannot be leased make such arrangements for the use and possession thereof for the LIL Lease Term as are required by Opco, and any lease or arrangement under this **Section 2.3(a)** shall be deemed to have been completed under **Section 2.1** and shall take effect accordingly under the provisions hereof.
- (b) If the Partnership, after the Effective Date, holds or acquires any LIL Assets and Rights not included in the LIL Real Property Interests or LIL Tangible Personal Property, it shall assign or license such property to Opco by instrument supplemental to this Agreement on the terms herein set forth *mutatis mutandis*, or if such property cannot be assigned or licenced make such arrangements for the use and enjoyment of such rights for the LIL Lease Term (or such shorter period as may be possible under the terms thereof) as are required by Opco, and any assignment or arrangement under this **Section 2.3(b)** shall be deemed to have been completed under **Section 2.2** and shall take effect accordingly under the provisions hereof.

- (c) Opco shall obtain in the name of the Partnership a replacement for any Head Lease or Statutory Easement that has a term as extended and renewed less one day, that is shorter than the LIL Lease Term, and any replacement therefor that has a term, as extended and renewed, less one day, that is shorter than the LIL Lease Term. The LIL Land Area included in replacements for Head Leases, and replacements for Statutory Easements, shall be leased to Opco as contemplated by **Section 2.1**, and generally in accordance with the provisions of this Agreement.
- (d) Opco shall obtain a replacement for any Contract, Permit or LIL Real Property Right that lapses prior to the end of the LIL Lease Term, and shall secure any additional Contract, Permit and LIL Real Property Right, as is from time to time required for Opco to carry out the Opco Business in accordance with the provisions of this Agreement, or as may be required to ensure the safety, security or title to, or maintenance, repair, alteration, replacement or operation of, the LIL or any part thereof.

2.4 Evidence of Lease, Licence or Assignment

If Opco shall for any reason require evidence of the lease, sublease, licence or assignment of a right or interest under **Section 2.1** or **2.2** or a supplemental instrument under **Section 2.3**, including for the purposes of the registration of such transaction in a public registry, then the Partnership shall, acting reasonably, provide such evidence by certificate, acknowledgement, caveat, short form of lease or other instrument appropriate to the circumstances. Opco shall be entitled to register this Agreement or notice thereof pursuant to the *Registration of Deeds Act* (Newfoundland and Labrador).

2.5 Contracts

Nothing in this Agreement shall be construed as an attempt to assign to Opco the Partnership's right, title and interest in any Contracts where:

- (a) any of such Contracts is, as a matter of law or by the terms thereof, not assignable without the consent of another party or other parties and in respect of which no such consent or not all such consents, as the case may be, has or have been given as of the Effective Date; or
- (b) any of such Contracts as to which all of the remedies for the enforcement thereof enjoyed by the Partnership would not as a matter of law pass to Opco as of the Effective Date as an incident of the transfer to be made under this Agreement,

and the Partnership shall hold such Contracts mentioned in **Sections 2.5(a)** and **(b)** hereof as bare trustee for the benefit of Opco until all conditions precedent to the assignment to Opco of all of the Partnership's rights, title and interest have been satisfied. All of the Partnership's right, title and interest in such Contracts will automatically pass to Opco by virtue of this Agreement upon satisfaction of all conditions precedent to such passage. During any period in which the Partnership is required to serve as bare trustee under this **Section 2.5** for the benefit of Opco, the Partnership shall remit to Opco all of the economic benefits associated with such Contracts. The Partnership

shall exercise commercially reasonable efforts to satisfy all conditions precedent to the assignment to Opco of the Partnership's right, title and interest in such Contracts, provided that if Opco is unable to satisfy all of such conditions within a reasonable period of time after the Effective Date, the Parties shall negotiate in good faith a mutually acceptable solution.

2.6 Non-Assignable Permits and LIL Real Property Rights

- (a) Notwithstanding any provision of this Agreement to the contrary, to the extent that any Permit or LIL Real Property Right is not by its terms assignable, requires a replacement, or otherwise requires the consent or approval of a third party in connection with the transactions contemplated herein, the execution and delivery of this Agreement shall not constitute an assignment or transfer thereof, an attempted assignment or transfer thereof, or an agreement to effect such an assignment or transfer, if such assignment or transfer, attempted assignment or transfer, or agreement would constitute a breach of such Permit or Real Property Right. Opco and the Partnership shall exercise commercially reasonable efforts to obtain or cause to be obtained in writing the consent or approval of such third party to the transactions contemplated herein in all cases in which such consent or approval is required.

- (b) In the event and to the extent that the Partnership is unable to obtain any such required consent or approval to assign, convey, transfer or replace any Permit or Real Property Right to Opco, the Partnership shall (i) continue to hold and to be bound by such Permit or Real Property Right, (ii) cooperate in any arrangement agreed by Opco and the Partnership to provide to Opco the benefits arising under any such Permit or Real Property Right, (iii) enforce at Opco's request or allow Opco to enforce (and, solely for such purpose, the Partnership hereby constitutes and appoints Opco as its true and lawful attorney), any rights of the Partnership under any such Permit or Real Property Right against the issuer thereof or any other Person, and (iv) Opco shall take all steps necessary to obtain such Permit or Real Property Right in its own name. To the extent that Opco is provided the benefits of any Permit or Real Property Right pursuant to this **Section 2.6**, Opco shall comply with all terms thereof or in connection therewith.

**ARTICLE 3
RENT PAYMENT**

3.1 Rent

During the LIL Lease Term, Opco shall pay Rent to the Partnership in accordance with the provisions of this **Article 3**.

3.2 Estimated Rent

- (a) Estimated Rent - The Partnership shall not later than 90 days prior to the commencement of each Operating Year (other than the first Operating Year) deliver to Opco a Notice (the "**Estimated Annual Rent Notice**") setting out the Partnership's

estimate of the amount of Rent payable to the Partnership for the upcoming Operating Year (the “**Estimated Annual Rent**”). The Estimated Annual Rent Notice shall contain the Estimated Annual Rent by component part (using the definition of Rent as a guide), set out an equal monthly payment due for each month in the Operating Year (the “**Estimated Monthly Rent**”), and otherwise be accompanied by such detail and supporting documentation as reasonably required by Opco to review the calculations of the Estimated Annual Rent. For the first Operating Year, the Estimated Annual Rent Notice shall be the Notice provided to Opco by the Partnership pursuant to Section 4.3 of the LIL Assets Agreement, and the Estimated Annual Rent and the Estimated Monthly Rent shall be as set forth in such Notice.

- (b) Payment - The Estimated Monthly Rent shall be paid by Opco to the Partnership monthly in advance on the first Business Day of each and every month from the Effective Date to the end of the LIL Lease Term. If the Effective Date is any day other than the first day of a month, Rent for the fraction of a month at the commencement shall be calculated on a pro rata basis and shall be payable on the Commissioning Date. If the LIL Lease Term ends on any day other than the last day of a month, Rent for the fraction of a month at the end shall be calculated on a pro rata basis and shall be payable on the first day of the partial month.

3.3 Actual Rent

- (a) Actual Rent - Within 15 days after the end of each Quarter or partial Quarter during which Estimated Monthly Rent has been paid by Opco to the Partnership, the Partnership shall deliver to Opco a Notice (the “**Actual Quarterly Rent Invoice**”) setting out the actual Rent payable for the previous Quarter (the “**Actual Quarterly Rent**”). The Actual Quarterly Rent Invoice shall contain the Actual Quarterly Rent by component part (using the definition of Rent as a guide), together with such other detail and supporting documentation as reasonably required by Opco to review the calculation of the Actual Quarterly Rent.
- (b) Quarterly Adjustment - Should the Actual Quarterly Rent exceed the sum of the Estimated Monthly Rent paid during the applicable Quarter, Opco shall pay to the Partnership within 15 days of receipt by Opco of the Actual Quarterly Rent Invoice the amount by which the Actual Quarterly Rent exceeds the sum of the Estimated Monthly Rent paid for the applicable Quarter. Should the Actual Quarterly Rent be less than the total sum of the Estimated Monthly Rent paid by Opco for the applicable Quarter, the Partnership shall within 15 days after delivery by the Partnership of the Actual Quarterly Rent Invoice either (i) pay to Opco the amount by which the sum of the Estimated Monthly Rent paid for the applicable Quarter exceeds the Actual Quarterly Rent, or (ii) deliver to Opco a Notice authorizing Opco to credit against future payment of Estimated Monthly Rent the amount by which the Estimated Monthly Rent paid for the applicable Quarter exceeds the Actual Quarterly Rent.

- (c) Annual Adjustment - Within 15 days after the Tax Adjustment True-up has been determined for the prior Operating Year, the Partnership shall deliver to Opco a Notice setting out the actual amount of rent ("**Actual Annual Rent**") which was required to be paid by Opco to the Partnership for the prior Operating Year, addressing in detail and with supporting documentation, any discrepancies from the total sum of the Actual Quarterly Rent paid by Opco over such Operating Year. The amount (whether positive or negative) by which the Actual Annual Rent differs from the total sum of the Actual Quarterly Rent paid for such Operating Year shall be adjusted between the Partnership and Opco such that, if the Actual Annual Rent is more than the total sum of the Actual Quarterly Rent paid for the Operating Year, Opco shall within 15 days after delivery by the Partnership of the applicable Notice pay the difference to the Partnership, and if the Actual Annual Rent is less than the total sum of the Actual Quarterly Rent paid for the Operating Year, the Partnership shall within 15 days of delivery by the Partnership of the applicable Notice either (i) pay the difference to Opco, or (ii) deliver to Opco a Notice authorizing Opco to credit the difference against future payment of Estimated Monthly Rent.
- (d) Further Adjustments - After the annual adjustment is made pursuant to **Section 3.3(c)**, should a Party discover or obtain written evidence of an overpayment or an underpayment of Rent for a previous Operating Year, such Party shall forthwith provide Notice of the overpayment or underpayment and the supporting documentation in its possession to the other Party. On verification of the overpayment or underpayment by the other Party or, if applicable, pursuant to the Dispute Resolution Procedure, the payment of funds to address such overpayment or underpayment shall be made by the applicable Party within 15 days.

3.4 Changes to Timing of Payment

The Parties agree to exchange information and, if necessary, to adjust the timing of payment of Rent as provided for in this Agreement to enable the timing of Estimated Monthly Rent payments to align as closely as is reasonably possible to payments made by NLH to Opco pursuant to the TFA and the timing of payments required under the Financing Documents.

3.5 Nature of Opco's Obligation to Pay Rent

Notwithstanding any other provision of this Agreement, including **Section 12.6**, until such time as the Financing is Paid in Full, Opco's obligation to pay the Partnership Rent shall be absolute, unconditional and irrevocable, and shall not be subject to any reductions under any circumstance whatsoever (except for the crediting permitted under **Section 3.3(b)** and **(c)** and the crediting of Prepaid Rent).

3.6 Prepaid Rent

- (a) Payment - Subject to the limitation set forth in **Section 3.6(b)**, at any time during the LIL Lease Term, Opco shall have, at its sole discretion and option, the right to prepay to the Partnership all or any portion of the Rent due and payable for a future

Operating Year. Opco shall exercise its right to prepay Rent or a portion thereof by sending a Notice (the “**Prepaid Rent Notice**”) of prepayment to the Partnership indicating the Operating Year to which the prepayment relates, together with the amount of the Prepaid Rent. Unless otherwise agreed, within 30 days after delivery of the Prepaid Rent Notice, Opco shall pay the amount of the Prepaid Rent to the Partnership.

- (b) Limitation - Notwithstanding any other provision of this Agreement, Opco's right to prepay Rent to the Partnership shall terminate on the occurrence of any enforcement proceeding (or notice thereof) by a Financing Party pursuant to the Financing Documents.
- (c) Nature of the Right - Opco intends to avail itself of this Prepaid Rent option during each of the calendar years during which construction of the LIL will not have been completed, including the calendar year which will include the Commissioning Date, and in the calendar years thereafter if it so determines. This stated intention of Opco does not create any right on the part of the Partnership to require Prepaid Rent from Opco at any time during the LIL Lease Term nor to require any minimum amount of Prepaid Rent to be paid if and when Opco were to exercise its option to prepay Rent. Furthermore, the Partnership shall have no recourse against Opco were Opco to determine not to prepay Rent during any calendar year.

3.7 Accounting for Prepaid Rent

Upon receiving Prepaid Rent, the Partnership shall forthwith record in its financial and accounting books the amount of Prepaid Rent received and the Operating Year to which it shall apply. As part of its obligation to grant Opco the right to peaceably enjoy use of the LIL without any interruption or disturbance by any Financing Party or Agent Party as provided by **Section 3.10(c)**, and without affecting its right to retain and use the income received by way of Prepaid Rent, the Partnership shall invest the amount of Prepaid Rent in the Prepaid Rent Reserve Account. During the LIL Lease Term, Prepaid Rent (or the applicable portion thereof) held in the Prepaid Rent Reserve Account shall be released during the Operating Year for which it was prepaid and applied until the balance in the Prepaid Rent Reserve Account is reduced to a zero dollar balance.

3.8 Interest on Overdue Amounts

- (a) Opco - If Opco fails to pay on the due date any amount payable to the Partnership pursuant to this Agreement, including the adjustment provisions set forth in **Sections 3.3(b), (c) and (d)**, Opco shall pay interest to the Partnership on such unpaid amount from the due date or, as the case may be, the date of demand to the date of actual payment (after as well as before judgment) at a rate equal to the default rate of interest set forth in the Financing Documents.
- (b) The Partnership - If the Partnership fails to pay on the due date any refund amount payable to Opco pursuant to the adjustment provisions set forth in **Sections 3.3(b), (c) and (d)**, the Partnership shall pay interest to Opco on such unpaid amount from the due date or, as the case may be, the date of demand to the date of actual

payment (after as well as before judgment) at a rate equal to the default rate of interest set forth in the Financing Documents.

3.9 **RROE**

- (a) The RROE to be earned by the Partnership in respect of any Fiscal Year shall be determined in accordance with the following principles and shall be changed whenever a reference rate of return is made effective by the PUB or other Authorized Authority, with the prior reference rate of return applying during the part of the Fiscal Year before the change and the new reference rate of return applying during the portion of the Fiscal Year after the change:
 - (i) if during such Fiscal Year there is only one privately-owned regulated electrical utility in NL, the RROE shall be equal to the rate of after tax-return on equity approved by the PUB in respect of such utility for such Fiscal Year; and
 - (ii) if during such Fiscal Year there is more than one privately-owned regulated electrical utility in NL, the RROE shall be the average of the rates of after-tax return on equity approved by the PUB in respect of all such utilities for such Fiscal Year.

- (b) If during such Fiscal Year there are no privately-owned regulated electrical utilities in NL, the RROE shall be the average of the rate of after-tax return on equity approved for such Fiscal Year for the four largest (measured by asset base), privately-owned regulated electrical utilities in Canada (but excluding both Nalcor and Emera and their Affiliates), provided that if there are fewer than four such utilities, the average referred to above shall be the average of all such utilities.

3.10 **Quiet Enjoyment**

The Partnership covenants and agrees that, provided Opco pays the Rent in accordance with the provisions of this Agreement and performs its covenants and obligations contained in this Agreement, Opco shall, under the rights granted in **Section 2.1**, peaceably enjoy use of that part of the LIL Land Area subject to the LIL Real Property Interests under and in accordance with this Agreement, and the LIL Tangible Personal Property, without any interruption or disturbance by,

- (a) the Partnership, its successors or any other Person acting on behalf of any of them;
- (b) a third party interest holder in, or claimant to, that LIL Land Area, the LIL Real Property Interests, the LIL Tangible Personal Property, or any portion thereof, except for the holders of any prior interests or rights included in the Permitted Encumbrances; or
- (c) any Financing Party, Agent Party or Acquiror.

**ARTICLE 4
COVENANTS AND AGREEMENTS**

4.1 General Covenants of Opco

- (a) Opco covenants and agrees:
- (i) to provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations under this Agreement, including professional engineers and procurement, project management and operating and maintenance personnel;
 - (ii) to obtain and maintain in good standing all Regulatory Approvals required for the Opco Business;
 - (iii) at its sole cost and expense, to do, observe and perform all obligations and all matters and things necessary or expedient to be done, observed or performed by virtue of any Applicable Law or otherwise for the purpose of:
 - (A) perfecting and maintaining the Partnership's interests in, and rights and title to, the LIL Assets and Rights, and keeping such interests, rights and title free and clear of Encumbrances (other than Permitted Encumbrances);
 - (B) perfecting and maintaining Opco's interests in, and rights and title to, the LIL Assets and Rights under and by virtue of this Agreement, and keeping such interests, rights and title free and clear of Encumbrances (other than Permitted Encumbrances),and to take and defend all Legal Proceedings necessary for such purposes;
 - (iv) to pay, with no right of recovery against and to the complete exoneration of the Partnership, all Operating and Maintenance Costs; and
 - (v) to co-operate with any Financing of the Partnership, to grant liens on all of Opco's assets, including all of the rights, benefits and interests arising under this Agreement, to and in favour of the Financing Parties, and to provide a guarantee in connection with the Financing to and in favour of the Financing Parties.
- (b) The Partnership irrevocably nominates, constitutes and appoints Opco, with full power of substitution, as the Partnership's agent and true and lawful attorney to act on the Partnership's behalf with full power and authority in the Partnership's name, place and stead to execute and deliver all Permits, comply with Applicable Law, and to enforce (including taking and defending all Legal Proceedings necessary for such purposes) and maintain the Partnership's interests in, and rights and title to, the LIL

Assets and Rights, against third parties, all in compliance with Opco's obligations as set forth in this **Section 4.1**. The Power of Attorney granted in this Agreement is irrevocable, is a power coupled with an interest, is given for consideration and extends to the successors, transferees and assigns of the Partnership. The Partnership shall cooperate with Opco in the performance by Opco of all of its obligations under this Agreement.

4.2 Operations and Maintenance Covenants of Opco

Opco covenants and agrees to keep the LIL in a good and reasonable state of repair consistent with Good Utility Practice and to that end, Opco shall:

- (a) perform, or cause to be performed, all O&M Activities in accordance with the O&M Standards and this Agreement;
- (b) ensure that all O&M Activities are conducted pursuant to the Annual Maintenance Plan, with only those variations as are necessary and appropriate for the operation and maintenance of the LIL in accordance with Good Utility Practice;
- (c) in the conduct of all O&M Activities, considering the remaining Service Life:
 - (i) apply methods and practices customarily applied by experienced utility operators in other similar circumstances;
 - (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
 - (iii) comply with all regulatory requirements of all Authorized Authorities; and
 - (iv) comply with Good Utility Practice.
- (d) comply with all Applicable Law (including rules governing the operation of the NL Transmission System to the extent applicable), Reliability Standards, as required by all Authorized Authorities in NL, and relevant Regulatory Approvals;
- (e) comply with all operating and maintenance requirements applicable to the LIL under the MPPA;
- (f) maintain and keep updated the Operation and Maintenance Manual;
- (g) prepare the O&M Budget and an Annual O&M Budget;
- (h) not do or suffer any waste or damage to the LIL (other than reasonable wear and tear), nor permit operation of the LIL outside the design parameters of the LIL;
- (i) enter or cause to be entered into O&M Contracts as are reasonably necessary to carry out the O&M Activities;

- (j) perform or cause to be performed the O&M Activities in a manner that is in compliance with all Applicable Law pertaining to HSE and that is designed to avoid material adverse impacts on the safety or health of people, property and the environment; and
- (k) prepare, and provide updates and revisions to, the LTAMP.

4.3 LIL Operations Matters

- (a) Preparation of Information - Opco shall prepare for the benefit of and deliver to the Partnership and the JOC in a timely manner (unless otherwise stated) the following (the “**LIL Operations Matters**”):
 - (i) at least 90 days prior to the commencement of an Operating Year, the proposed Annual Maintenance Plan;
 - (ii) inspection and condition reports on the LIL completed by Opco’s engineers, original equipment manufacturers, O&M Contractors, lenders’ engineers and surveyors, insurance providers’ engineers and surveyors or other Persons completing such reports;
 - (iii) annually, a list of the material O&M Contracts, including the scope of work thereunder and names of the O&M Contractors;
 - (iv) Annual O&M Budgets, including monthly cash flows for the LIL;
 - (v) copies of material communications with all Authorized Authorities relating to O&M Activities, including communications with environmental regulators, periodic regulatory reports and correspondence relating to disputes with Authorized Authorities;
 - (vi) updates and revisions to all LTAMPs;
 - (vii) reports of O&M Activities; and
 - (viii) prior to implementation, any changes or updates to any of the foregoing.
- (b) JOC Decisions - Opco and the Partnership shall abide by all decisions of the JOC, and Opco shall implement the LIL Operations Matters in the manner Approved by the JOC. Disputes arising in respect of decisions of the JOC shall be resolved in accordance with the JOA.

4.4 Additional Property of the Partnership

Unless otherwise agreed by Opco and the Partnership, additional property acquired in connection with O&M Activities shall be the property of the Partnership and form part of the LIL Assets and Rights. Opco and the Partnership agree to execute all documentation reasonably

required by the other to effect the transfer of such ownership to the Partnership and the lease, license or assignment to Opco as contemplated by **Section 2.3** and this **Section 4.4**.

4.5 Use of the Labrador-Island Link

Opco agrees and acknowledges that the transmission of electricity on the LIL will only occur on an open and non-discriminatory basis in compliance with open access and regulatory requirements.

4.6 Partnership Commitment to Perform Upgrades

The Partnership shall perform in accordance with Good Utility Practice and at its cost all upgrades and improvements to the Island Interconnected System to facilitate the operation of the LIL. NLH shall be the legal and beneficial owner of these upgrades and improvements.

4.7 Obligations Under Non-Freehold Interests

Opco and the Partnership acknowledge, covenant and agree with each other as follows:

- (a) Opco has received and read a copy of each Non-Freehold Interest and will:
 - (i) be bound by and abide by the terms and conditions of each Statutory Easement as if it were the grantee thereunder, and execute and deliver to the appropriate Person any further documentation required to perfect the lease of Statutory Easements as set forth in this Agreement under the terms of a Statutory Easement or Applicable Law;
 - (ii) observe and perform all of the terms, covenants, conditions and obligations of the tenant or subtenant under each Non-Freehold Interest which is not a Statutory Easement and any extension or renewal thereof, except as to any default or breach taking place prior to the Effective Date, and any that must be observed or performed by the Partnership, which for greater certainty the Partnership will observe and perform; and
 - (iii) not do or omit to do any act in or around the LIL Land Area that would cause a breach of any of the terms, covenants, conditions or obligations of the tenant, subtenant or grantee under the Non-Freehold Interests or any extension or renewal thereof;
- (b) the determination of any state of facts, promulgation of any rules or regulations, or the taking of any action or exercise of any other right under any Non-Freehold Interest or any extension or renewal thereof which is permitted to be done by the party granting the same will, upon written notice to Opco of such action or exercise, be binding upon Opco;

- (c) that the Partnership has no greater interest in the parts of the LIL Land Area encumbered by the Non-Freehold Interests than it has pursuant to the Non-Freehold Interests and to the extent that any right or benefit conferred by this Agreement contravenes or is incompatible with any Non-Freehold Interest, such right or benefit shall be deemed to have been amended or modified so as not to contravene or be incompatible therewith;
- (d) the Partnership will exercise any right or option for any extension or renewal of a Non-Freehold Interest if the term thereof would otherwise expire prior to the day following the last day of the LIL Lease Term;
- (e) Opco may take such action in the name of the Partnership as Opco shall deem advisable in order to enforce against the grantor under each Non-Freehold Interest or any extension or renewal thereof the obligations of the grantor thereunder that materially affect use and enjoyment of the parts of the LIL Land Area encumbered thereby;
- (f) Opco shall indemnify and save harmless the Partnership from and against the costs and expenses associated with:
 - (i) the Partnership's performance and observance of the terms, covenants, conditions and obligations of the tenant, subtenant or grantee under each Non-Freehold Interest and any extension or renewal thereof that must be observed or performed by the Partnership;
 - (ii) the enforcement of the obligations of the grantor under each Non-Freehold Interest or any extension or renewal thereof for the benefit of Opco; and
 - (iii) exercise any right or option for any extension or renewal of a Non-Freehold Interest,

in accordance with the provisions hereof.

4.8 Obligations Under Choses in Action

Opco and the Partnership acknowledge, covenant and agree with each other as follows:

- (a) Opco has received and read a copy of each of the Choses in Action and will observe and perform all of the obligations of the Partnership thereunder from and after the Effective Date as if Opco was named therein as the grantee from and after the Effective Date, and will indemnify and save harmless the Partnership from all Losses incurred by the Partnership arising out of any failure on the part of Opco to fully observe and perform the Partnership's obligations under the Choses in Action from and after the Effective Date;

- (b) the Partnership will from time to time and at all times hereafter at the request of Opco, execute and deliver to Opco such further assurances for assigning, or evidencing the assignment, to Opco of the Choses in Action or any of them as Opco shall advise; and
- (c) Opco may take such action in the name of the Partnership as Opco shall deem advisable in order to enforce the performance and observance by the other parties to the Choses in Action or any of them of their obligations thereunder, and if it does take any such action Opco shall indemnify and save harmless the Partnership from and against all Losses incurred by the Partnership as a result.

4.9 Prior Non-Financial Encumbrances

Opco agrees that it will perform and observe the provisions of any non-financial encumbrances against the LIL Land Area or the Partnership's rights and interests therein as of the Effective Date that have priority over Opco's interests in, and rights and title to, the LIL Land Area under and by virtue of this Agreement.

4.10 Repair of Ancillary Improvements

Opco shall at its own cost and expense, maintain and repair, subject to reasonable wear and tear, and, as a Sustaining Activity, replace, any fixtures on or in the LIL Land Area that are included in or subject to the LIL Assets and Rights, and any LIL Tangible Personal Property, that are not part of the LIL, as from time to time required to fully perform the O&M Activities. Opco's obligation to maintain and repair LIL Tangible Personal Property under this **Section 4.10** shall not require it to maintain and repair any such property after the end of its useful service life, but Opco shall from time to time replace any such property and maintain and repair such replacement property as from time to time is required to fully perform the O&M Activities.

4.11 Use of LIL and LIL Land Area

Opco shall not use or permit to be used any part of the LIL, the LIL Land Area or any of the LIL Assets and Rights for any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business, and shall not cause or permit any nuisance in, at or on the LIL or the LIL Land Area. For the avoidance of doubt, the operation of the LIL in accordance with Good Utility Practice shall not be considered a nuisance.

4.12 Compliance with Laws

Except as otherwise provided herein, Opco shall observe, fulfill and comply at its expense with Applicable Law concerning the Opco Business, the tangible property included in the LIL Assets and Rights, and the condition, use and occupation of the LIL Land Area under this Agreement. If the Partnership, pursuant to any Applicable Law, has any obligations under such Applicable Law Opco shall, except to the extent such obligations are Sustaining Activities, assume or perform or cause to be assumed or performed at Opco's sole expense, all such obligations of the Partnership.

4.13 **Notices of Non-Compliance**

Opco shall promptly provide to the Partnership:

- (a) copies of any notices or Claims received by it from any Authorized Authority or any other Person (including the owner of any right or interest in the LIL Land Area or any part of it) relating to the Opco Business, the tangible property included in the LIL Assets and Rights, or the condition, use and occupation of the LIL Land Area, other than a Claim relating to Taxes that are personal to Opco, and shall promptly and diligently remedy any non-compliance on its part disclosed by such notice or Claim, whether the Claim is issued in the name of Opco or the Partnership; and
- (b) upon the Partnership's request, reasonable evidence of Opco's compliance with any provisions of this Agreement.

4.14 **Opco's Right To Contest**

Opco shall have the right to contest by appropriate Legal Proceedings, at its sole cost and expense, the validity of any Applicable Law concerning the Opco Business, the tangible property included in the LIL Assets and Rights, or the condition, use and occupation of the LIL Land Area, compliance with which is the obligation of the Opco under this Agreement. Opco may postpone compliance therewith until the final determination of any such proceedings, provided that:

- (a) all such proceedings shall be prosecuted with due diligence and dispatch on the part of Opco; and
- (b) that such postponement does not in any manner prejudice or imperil the safety, security, title to, or maintenance, repair, alteration, replacement or operation of the LIL, the LIL Land Area, the LIL Assets and Rights, or any part of any of them, or result or potentially result in any Claim or Encumbrance on or against the LIL, the LIL Land Area, the LIL Assets and Rights or the Partnership.

4.15 **Opco Not to Encumber**

Except for Permitted Encumbrances or as otherwise required or permitted by this Agreement or the Financing Documents, Opco shall not create or suffer or permit the creation of any Encumbrance or Claim for Encumbrance on, against or with respect to the LIL, the LIL Land Area, the LIL Assets and Rights, or its rights or interests therein, without the prior written consent of the Partnership.

4.16 **Discharge**

Except as permitted under this Agreement, if Opco shall create or suffer or permit any Encumbrance or Claim for Encumbrance to be created or asserted on, against or with respect to the LIL, the LIL Land Area, the LIL Assets and Rights, or Opco's rights or interests therein including by way of any claim of mechanics' lien or fixtures notice under the *Personal Property Security Act*

(Newfoundland and Labrador), Opco shall, subject to **Section 4.17**, cause such Encumbrance or Claim to be discharged or otherwise released within 45 days after the date of registration or filing of same in the applicable registry office. If Opco fails to contest the validity of such Encumbrance or Claim in accordance with **Section 4.17** or cause such Encumbrance or Claim to be discharged or otherwise released within such period, then, in addition to any other rights or remedies available to the Partnership, the Partnership may cause such Encumbrance or Claim to be discharged or otherwise released by any means whatsoever, including paying any amount claimed to be due by the Person registering or filing such Encumbrance or Claim in the applicable registry office, without inquiry by the Partnership into the validity of such Encumbrance or Claim. Any amount paid by the Partnership in procuring the discharge or release of any such Encumbrance or Claim and all costs incurred in connection therewith, shall be paid by Opco to the Partnership within 30 days of the Partnership's submission to Opco of an invoice therefor.

4.17 **Contest**

Opco may contest the validity of any Encumbrance or Claim described in **Section 4.16** and delay payment of the amount secured by or claimed to be secured by, and the discharge or release of the same for the period of such contest, provided that:

- (a) within 30 days after any such Encumbrance or Claim is filed or registered, Opco shall have given Notice to the Partnership of Opco's intention to contest the same and such Notice shall have specified the amount secured by or claimed to be secured by the Encumbrance or Claim to be contested;
- (b) all proceedings for such contest shall be prosecuted with due diligence and dispatch on the part of Opco; and
- (c) such contesting does not in any manner prejudice or imperil the safety, security, title to, or maintenance, repair, alteration, replacement or operation of the LIL, the LIL Land Area, the LIL Assets and Rights, or any part of any of them, or result or potentially result in any enforcement or realization proceedings under such Encumbrance or Claim on or against the LIL, the LIL Land Area, the LIL Assets and Rights or the Partnership.

4.18 **Environmental**

Opco acknowledges, covenants and agrees as follows:

- (a) that the Partnership, either itself or through its employees or agents, has not made and Opco has not relied upon, any representations, warranties or other assurances from the Partnership or its employees or agents as to:
 - (i) the existence, nature or extent of any Contaminants on or in the soils, surface water or groundwater of the LIL Land Area or any part of it or anything situated thereon; or

- (ii) the need to remediate the soil, surface water or groundwater of the LIL Land Area or any part of it to comply with the provisions of Environmental Laws;
- (b) the use of and operations on the LIL Land Area under this Agreement shall at all times and in all respects comply with and abide by the requirements of all Environmental Laws;
- (c) no Contaminants shall be brought onto the LIL Land Area or Released therefrom as a result of or in the course of the use and occupation of the LIL Land Area under this Agreement, except in accordance with all Environmental Laws;
- (d) Opco shall promptly provide to the Partnership a copy of any environmental site investigation, assessment, audit, report or test results relating to the LIL Land Area or anything situated thereon conducted by or for Opco at any time;
- (e) Opco shall promptly notify the Partnership in writing of any Release of a Contaminant in the course of the use and occupation of the LIL or the LIL Land Area under this Agreement or any other occurrence or condition on the LIL Land Area that:
 - (i) is not in accordance with Environmental Laws;
 - (ii) does or could contaminate the soils or groundwater of the LIL Land Area; or
 - (iii) could subject either Opco or the Partnership to any Claims, fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (f) Opco shall comply with any lawful order made under Environmental Laws concerning the clean up or remediation of the LIL Land Area or neighbouring lands that is required as a result of any Release of any Contaminant in, under or upon the LIL Land Area due to the use or occupation thereof under this Agreement;
- (g) upon the expiry of the LIL Lease Term or any earlier termination thereof Opco shall carry out any clean up or remediation of the LIL Land Area that is required as a result of any Release of any Contaminant in, under or upon the LIL Land Area due to the use or occupation thereof during the LIL Lease Term to and in accordance with the standards prescribed by Environmental Laws and without limitation shall:
 - (i) commence and complete, at its sole risk and expense, such clean up and remediation;
 - (ii) dispose of any contaminated soil or water or Contaminant taken from the LIL Land Area, in accordance with Environmental Laws; and
 - (iii) replace any contaminated soil removed from the LIL Land Area with clean fill as appropriate under the circumstances; and

- (h) it shall indemnify, defend and save harmless the Partnership in respect of all claims for bodily injury (including death), property damage or other loss or damage, including damage to property outside the LIL Land Area, arising out of or in any way connected with the manufacture, storage, transportation, handling and Release of Contaminants on or from the LIL Land Area by Opco, or by any agent, employee, O&M Contractor or any other party for whom Opco is responsible in law.

4.19 LIL Taxes and Other Charges

Opco shall:

- (a) pay directly to the appropriate taxing authorities any and all LIL Taxes, provided that (i) if either the Effective Date or the last day of the LIL Lease Term is part way through a period for which any LIL Taxes are payable such Taxes shall be apportioned as between the Partnership and Opco on a pro rata basis for the portion of the year in which this Agreement is in effect and any payment between the Partnership and Opco needed to effect such apportionment shall be made, and (ii) if any right or interest in the LIL Land Area held by Opco under this Agreement expires or lapses before the expiry of the LIL Lease Term the obligations of the Parties in respect thereof shall lapse on that earlier date despite any other provision of this Agreement;
- (b) have the sole right to deal with the assessment authority with respect to the assessments and valuations on which LIL Taxes payable by Opco are based and shall have full right and liberty to, at any time and from time to time, contest any LIL Taxes payable by Opco and any assessment valuation or rate relating thereto, provided that (i) such contestation does not give rise to any Encumbrance on the LIL Assets and Rights, the LIL Land Area or any part thereof (or if such Encumbrance does arise suitable alternate security for the amount claimed thereunder or secured thereby is provided, and does not involve the possibility of any forfeiture, escheat or sale of the LIL Assets and Rights, the LIL Land Area or any part thereof or interest therein) and (ii) any such proceeding shall be prosecuted with diligence, at Opco's sole expense, and Opco may prosecute any such contest or dispute in the name of the Partnership, whether or not jointly with Opco;
- (c) pay all costs and expenses of any such contestation, including costs and expenses, if any, incurred by the Partnership, and for certainty will also pay all costs, penalties, interest or other charges payable as a result of or incidental to such contestation;
- (d) pay directly to taxing authorities any and all fees, taxes or other charges that are imposed, assessed or charged in connection with its conduct of any business or other activity on the LIL Land Area or any portion thereof and all business taxes and licence fees assessed or levied in respect of any business or activity of Opco on the LIL Land Area or any portion thereof;
- (e) pay all charges for all utility services required for the LIL or the Opco Business and consumed on or in respect of the LIL Land Area during the LIL Lease Term, including

for gas, electricity, telecommunications, water, sewer and any other utility connections and services; and

- (f) except as otherwise provided in this Agreement, be solely responsible for all costs, expenses, charges, obligations and liabilities of any nature and kind relating to or arising from the LIL Assets and Rights and Opco's use, occupancy, repair, maintenance, development or management of, interest in, or operations on, the LIL Land Area. Opco and the Partnership agree that it is their intent that, except as expressly provided in this Agreement to the contrary, this Agreement shall be a completely carefree absolutely net lease to the Partnership and the Partnership, during the LIL Lease Term, shall not be responsible for any costs, charges, expenses, outlays, obligations or liabilities of any nature or kind whatsoever arising from or relating to the LIL, the LIL Assets and Rights, the LIL Land Area or any part thereof, and Opco covenants to pay promptly all such costs, charges, expenses, outlays, obligations and liabilities.

4.20 **JOC-LIL**

Upon establishment of the JOC-LIL pursuant to Section 2.6 of the LIL Assets Agreement, all references to the JOC in this Agreement shall be deemed to refer to the JOC-LIL.

ARTICLE 5
ESTOPPEL CERTIFICATES, SUBORDINATION AND OTHER MATTERS

5.1 **Estoppel Certificate**

Opco will at any time and from time to time upon the request of the Partnership execute and deliver to the Partnership, or a Financing Party, or a prospective purchaser of the whole or any portion of the Partnership's interest in the LIL Assets and Rights, a statement in writing confirming the terms of this Agreement, certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the modifications and that the Agreement is in full force and effect as modified), and certifying:

- (a) the amount of the Rent and other charges then being paid under this Agreement;
- (b) the dates to which the Rent and other charges under this Agreement have been paid;
- (c) whether the Partnership has complied with all of its obligations under this Agreement;
- (d) whether there are any outstanding set-offs or equities disclosed or undisclosed as between the Partnership and Opco; and
- (e) any other matters pertaining to this Agreement in respect of which the Partnership may desire certification.

5.2 Subordination

Upon written request of the Partnership, Opco shall subordinate Opco's interest in, and right and title to, the LIL Assets and Rights under and by virtue of this Agreement to any and all mortgages, trust deeds, security interests and charges under the Financing Documents that encumber the LIL Assets and Rights, now or in the future, including all renewals, extensions, modifications and replacements thereof from time to time. Opco shall, at any time, on notice from the Partnership or any Financing Party, attorn to and become a tenant of such Person as to any of the LIL Assets and Rights in which it has a leasehold estate under the provisions hereof, on the same terms and conditions as set forth in this Agreement

**ARTICLE 6
SUSTAINING EXPENDITURES**

6.1 Sustaining Activities

- (a) General - Opco agrees to carry out all Sustaining Activities, and the Partnership agrees to pay for all Sustaining Costs.
- (b) Budgets - Opco shall,
 - (i) within 90 days of receipt of any information which would increase or decrease the Annual O&M Budget by \$1,000,000 or more, deliver to the Partnership a revised Annual O&M Budget; and
 - (ii) not later than 90 days prior to the commencement of each Operating Year (other than the first Operating Year) deliver to the Partnership the Annual O&M Budget.
- (c) Sustaining Activity Contracts - Opco shall enter into all Sustaining Activity Contracts.
- (d) Payment of Sustaining Costs - From time to time Opco shall deliver to the Partnership invoices for Sustaining Costs. The Partnership shall pay to Opco the amount of such invoices in sufficient time for the invoice amount to be paid in accordance with the payment terms set out in the Sustaining Activity Contract.
- (e) Payment of Changes in Rent - Any change in the amount of Rent to be paid by Opco to the Partnership as a result of the payment by the Partnership of Sustaining Costs shall commence at the start of the Operating Year following the determination of the change in Rent.

**ARTICLE 7
INFORMATION, ACCESS AND REPORTING**

7.1 Records and Audits

Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be

maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the LIL Lease Term, including major maintenance records, life cycle management records and design and Commissioning records, shall be maintained for the LIL Lease Term; all other documents shall be retained for the longer of (a) any period prescribed by Applicable Law, and (b) 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 this Agreement. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

7.2 Access to the LIL

The Partnership shall have the right, from the Effective Date through to the end of the LIL Lease Term, upon reasonable prior Notice to Opco, to access the LIL Land Area for the sole purpose of examining the LIL or the conduct of the O&M Activities or otherwise in connection with the performance by Opco of its obligations under this Agreement, such reasonable prior Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities on the LIL Land Area and shall not compromise the safety of persons or property. While accessing the LIL Land Area, the Partnership and its Representatives shall follow all rules and procedures established for visitors to the site which are related, but not limited, to safety and security. The inspection of the LIL or the exercise of any audit rights or the failure to inspect the LIL or to exercise audit rights by or on behalf of the Partnership shall not relieve Opco of any of its obligations under this Agreement. No Opco Default or Partnership Default will be waived or deemed to have been waived solely by any inspection by or on behalf of the Partnership. In no event will any inspection by the Partnership be a representation that there has been or will be compliance with this Agreement and Applicable Law.

7.3 Communications with Authorized Authorities

Each Party, with respect to the LIL, shall, upon written request by another Party and to the extent permitted by Applicable Law, provide such other Party with copies of all communications and correspondence to any and all Authorized Authorities.

ARTICLE 8
TAXES

8.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in

respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.

- (b) Governmental Charges - Subject to **Section 8.1(c)**,
 - (i) if Opco is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, Opco shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership under this Agreement, and the Partnership shall promptly reimburse Opco for such Taxes to the extent not so offset;
 - (ii) if the Partnership is required by Applicable Law to remit or pay Taxes which are Opco's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to Opco under this Agreement, and Opco shall promptly reimburse the Partnership for such Taxes to the extent not so offset; and
 - (iii) 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 8.1(a)** and **8.1(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 from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 8.3**; 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 8.1(b)** and **8.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
 - (i) the Partnership is solely responsible for the payment of income taxes and HST payable by the Partnership; and
 - (ii) Opco is solely responsible for the payment of income taxes and HST payable by Opco.

8.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 8.2(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.

8.3 Invoicing Tax Requirement

All invoices, as applicable, 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.

8.4 Payment and Offset

- (a) Subject to **Section 8.4(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.

8.5 HST Registration Status and Residency

- (a) Opco represents and warrants that it is registered for purposes of the HST and that its registration number is 8394 61779 RT0001, and undertakes to advise the Partnership of any change in its HST registration status or number.
- (b) The Partnership represents and warrants that it is registered for purposes of the HST and that its registration number is 8063 71100 RT0001, and undertakes to advise Opco of any change in its HST registration status or number.
- (c) Opco represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise the Partnership of any change in its residency status.
- (d) The Partnership represents and warrants that it is a Canadian partnership for the purposes of the Income Tax Act, and undertakes to advise Opco and NLH of any change in its status as a Canadian partnership.

8.6 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).

8.7 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 8.7**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 8.7(a)** through **8.7(b)**.

8.8 **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.

8.9 **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 Laws, 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.

8.10 **Tax Indemnity**

Each Party (in this **Section 8.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 8** 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 8.1(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.

8.11 **Additional Tax Indemnity**

If one Party (in this **Section 8.11** 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 8.11** 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 8.11** 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 8.11** 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.

8.12 **Assignment**

Notwithstanding any other provision in this Agreement and only to the extent an assignment is authorized in accordance with this Agreement, 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 Parties of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Section 8.12** and **Article 16**.

**ARTICLE 9
INSURANCE**

9.1 Insurance Program

Opco, with respect to the LIL, shall, as it deems necessary, acting reasonably, keep in place or cause to be placed for the LIL Lease Term such operational, property and liability insurances maintained by other operators in Canada for a facility of similar size and design, including:

- (a) All Risk Property Insurance;
- (b) Third Party Liability Insurance; and
- (c) such other coverages as may be deemed appropriate in the opinion of Opco, acting reasonably, giving due consideration to the inherent risks involved in the operation of the LIL and the factors mentioned in **Section 9.2**.

9.2 Coverages, Limits, Deductibles and Exclusions

In each case, the insurance placed by or on behalf of Opco shall provide for coverages, limits, deductions and exclusions and other terms and conditions as may be appropriate for the operation of the LIL, giving due consideration to:

- (a) requirements of the Financing Documents;
- (b) the values at risk and the maximum loss exposures reasonably anticipated at the time the insurance coverage is placed;
- (c) exposures to third party liabilities;
- (d) commercial availability and commercially reasonable cost of such coverage;
- (e) the reasonable practices employed by similar entities and similar projects in Canada; and
- (f) Opco's financial ability and desire to retain or self-insure certain risks.

9.3 Liability and Property Coverage

Opco shall keep in place or maintain in place Third Party Liability Insurance to cover legal liabilities for bodily injury and property damage arising out of the performance of its obligations under this Agreement and/or arising out of the LIL.

9.4 Provisions to be Included in Insurance Policies

All insurance procured by Opco pursuant to this **Article 9** shall, as applicable:

- (a) name the Partnership, the Partners, NLH, the Financing Parties and the directors, officers and employees of the GP, as their interests may appear, as additional insureds or first loss payees, as applicable;
- (b) be at Opco's expense and be primary, non-contributing with, and not in excess of, any other insurance available to the Partnership;
- (c) provide for 30 days notice to the Partnership in the event of cancellation or material change that reduces or restricts the insurance, provided that if insurers shall provide notice earlier than 30 days, the Party receiving such notice shall immediately provide Notice to the other Party of same;
- (d) remain in full force and effect at all times during the LIL Lease Term; and
- (e) include a waiver of subrogation in favour of the Partnership, its Affiliates as appropriate, and their respective directors, officers and employees.

9.5 Lender Requirements

Opco and the Partnership shall cooperate fully with each other and shall assist each other in complying with obligations imposed by the Financing Parties pursuant to the Financing Documents and other lenders relating to insurance coverage provided pursuant to this **Article 9**, including the use of insurance proceeds in the event of a catastrophic loss.

9.6 Contractors

O&M Contractors, to the extent their contracts require them to procure insurance, shall be required to comply with such insurance provisions as may be required.

9.7 Evidence of Insurance

Opco shall deliver to the Partnership annually, after policy renewal, certificates of insurance or other appropriate evidence that insurance as required by this **Article 9** is in place. In addition, if requested by the Partnership, Opco shall provide satisfactory evidence of insurance in the form of a certificate of insurance.

9.8 Placement of Required Insurance

If Opco fails to obtain or maintain any insurance required to be maintained by it hereunder, the Partnership may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of Opco.

9.9 Effect of Failure to Insure

Notwithstanding **Section 9.8**, none of the obligations of the Parties in this Agreement shall be reduced, or in any way affected, or diminished in any respect, by a failure of a Party to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by a denial of coverage of any insurance, nor shall a Party be

entitled to any indemnity or contribution as a result of any such failure to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by any denial of coverage of any insurance.

9.10 **Site Visits**

The Partnership will provide to Opco evidence of liability and automobile insurance in anticipation of any site visits with respect the LIL.

9.11 **Corporate Policies**

It is understood and agreed that Opco may provide the coverage referenced in this Agreement through policies covering other assets and/or operations operated by Opco or its Affiliates.

**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 6** (the “**Dispute Resolution Procedure**”).

- (b) Disputed Payment - Notwithstanding any other provision of this Agreement, if the amount or timing of any payment is disputed by a Party, the Party liable to pay shall make the payment in full on the date such payment is required, prior to initiating any Dispute Resolution Procedure relating thereto. The Parties further agree that any payment to be received by it from the other as a result of a Dispute Resolution Procedure shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents.

- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 10**, without prejudice to either Party’s rights pursuant to this Agreement.

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

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 another Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly give the Recipient Party Notice 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 of the Claiming Party to promptly give Notice.

- (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.

ARTICLE 11
TERM AND TERMINATION

11.1 **LIL Lease Term**

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

11.2 **Termination**

This Agreement shall terminate on the first to occur of:

- (a) the later of (i) the date which is one month prior to the end of the Service Life; and (ii) the date which is five years after the date on which the Financing is Paid in Full;
- (b) January 1, 2075;
- (c) the date as may be provided pursuant to the LIL Remedies Agreement; and
- (d) subject to the approval of the Financing Parties, the date set forth in a written agreement of the Parties to terminate.

11.3 **Effect of Termination**

- (a) Obligations on Termination - When this Agreement terminates:
- (i) each Party shall promptly return all Confidential Information of another Party in the possession of such Party, and destroy any internal documents that contain any Confidential Information of another Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law which shall continue to be held in accordance with the provisions of **Section 15.1**);
 - (ii) the leases and subleases of LIL Land Area, Statutory Easements and LIL Tangible Personal Property made by **Section 2.1** shall terminate;
 - (iii) all licences of and rights to use Intellectual Property Rights held by the Partnership made in favour of Opco pursuant to this Agreement shall terminate and Opco shall assign to the Partnership all such Intellectual Property Rights;
 - (iv) Opco shall transfer and deliver to the Partnership free of all Encumbrances, (other than Permitted Encumbrances) all LIL Project Data, all information used in the preparation of reports and other data necessary for the Partnership to operate the LIL, and all existing materials and supplies utilized by Opco in the operation or maintenance of the LIL;
 - (v) Opco shall assign and transfer to the Partnership, free of all Encumbrances (other than Permitted Encumbrances), all of Opco's right, title and interest in the LIL Assets and Rights not otherwise terminated or delivered pursuant to **Section 11.3(a)(ii), (iii) and (iv)**, including (A) the LIL Real Property Rights, (B) the LIL Tangible Personal Property, (C) the Contracts (including, for the avoidance of doubt, all interconnection agreements and transmission service agreements), and (D) the Permits. To the extent any LIL Real Property Right, Contract or Permit is not by its terms assignable, requires a replacement Permit or Real Property Right or otherwise requires the consent or approval of a third party for the assignment thereof, Opco and the Partnership shall exercise commercially reasonable efforts to obtain or cause to be obtained the consent or approval of such third party. Until the consent or approval of such third party is obtained Opco shall continue to hold such LIL Real Property Right, Contract or Permit as bare trustee for the benefit of the Partnership;
 - (vi) Opco shall take such commercially reasonable actions, and execute such documents, as may be necessary to effectuate and confirm the transactions contemplated in **Sections 11.3(a)(ii), (iii), (iv) and (v)**; and
 - (vii) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 11.3**.

- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
- (i) the final settlement of all accounts between the Parties;
 - (ii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
 - (iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement;
 - (iv) clean-up or remediation obligations as set forth in **Section 4.18(g)**;
 - (v) information and access as set forth in **Sections 7.1** and **7.2**; and
 - (vi) any other obligations that survive pursuant to **Section 18.13**.
- (c) Surrender of the LIL - At the expiration or earlier termination of this Agreement, Opco shall peaceably surrender and give up unto the Partnership vacant possession of the LIL in the same condition and state of repair as Opco is required to maintain the LIL throughout the LIL Lease Term by the provisions of this Agreement.

11.4 Overholding

If, at the expiration of the LIL Lease Term or any renewal or extension thereof, Opco shall continue to occupy the LIL Land Area without further written agreement of the Partnership, there shall be no tacit renewal of this Agreement, and the tenancy of Opco thereafter shall be from month to month only, and may be terminated by either Party on one month's prior Notice. Rent shall be payable in advance on the first day of each month equal to the sum of 150 percent of the monthly instalment of Rent payable during the last year (or portion thereof) of the LIL Lease Term determined in the same manner as if this Agreement had been renewed, and all the provisions of this Agreement shall, so far as applicable, apply to such monthly tenancy.

ARTICLE 12 DEFAULT AND REMEDIES

12.1 Opco Events of Default

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

- (a) Opco 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 five days after the receipt of Notice from the Partnership that such amount is due and owing;

- (b) Opco is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 12.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Opco of Notice thereof from the Partnership, unless the cure reasonably requires a longer period of time and Opco is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by the Partnership;
- (c) any representation or warranty made by Opco in this Agreement is false or misleading in any material respect;
- (d) Opco 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; or
- (e) any Insolvency Event occurs with respect to Opco or NLH;

12.2 Partnership Remedies upon Opco Default

- (a) General - Upon the occurrence of an Opco Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement or the LIL Remedies Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) the Partnership shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, the LIL Remedies Agreement or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to the Partnership are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to this **Section 12.2** and **Article 14**, the Partnership may recover all Losses suffered by the Partnership that result from an Opco Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by the Partnership to recover any amounts owed to the Partnership by Opco under this Agreement, provided however, in no circumstances shall Opco be required to pay the net present value of the Rent due to be paid pursuant to the terms of this Agreement.

12.3 Partnership Events of Default

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

- (a) the Partnership 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 five days after the receipt of Notice from Opco that such amount is due and owing;

- (b) The Partnership is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 12.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by the Partnership of Notice thereof from Opco, unless the cure reasonably requires a longer period of time and the Partnership is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Opco;
- (c) any representation or warranty made by the Partnership in this Agreement is false or misleading in any material respect;
- (d) the Partnership 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 the Partnership; or
- (f) the Partnership is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation by the Partnership arising from an indemnity obligation set forth in the Financing Documents.

12.4 Opco Remedies upon Partnership Default

- (a) General - Upon the occurrence of a Partnership Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement or the LIL Remedies Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Opco shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, the LIL Remedies Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Opco 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 this **Section 12.4** and **Article 14**, Opco may recover all Losses suffered by Opco that result from a Partnership 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 Opco to recover any amounts owed to Opco by the Partnership under this Agreement.

12.5 **Equitable Relief**

Prior to the Financing being Paid in Full, no Party shall have any right, remedy or recourse to terminate this Agreement for any reason and Opco shall not have the right to set-off against its obligations to pay Rent (except for the crediting permitted under **Sections 3.3(b)** and **(c)** and the credibility of Prepaid Rent), without the consent of the Financing Parties. Subject to the foregoing sentence, nothing else in this **Article 12** 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.

12.6 **Force Majeure**

Other than an obligation to pay or spend money including **Section 3.5**, in the event that either the Partnership or Opco shall be delayed, hindered or prevented from the performance of any act required by this Agreement by reason of Force Majeure, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such Force Majeure.

12.7 **Conflicts or Inconsistency**

If there is any conflict or inconsistency between this **Article 12** and the LIL Remedies Agreement, the LIL Remedies Agreement shall prevail.

ARTICLE 13
LIABILITY AND INDEMNITY

13.1 **Partnership Indemnity**

- (a) The Partnership shall indemnify, defend, reimburse, release and save harmless Opco, its Representatives and each of their successors and permitted assigns (each such Person, a "**Partnership Indemnified Party**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Partnership Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
 - (i) an inaccuracy or breach of any representation or warranty made by the Partnership in this Agreement, or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of the Partnership in this Agreement, or any other document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of the Partnership occurring in connection with, incidental to or resulting from the Partnership's obligations pursuant to this Agreement, or any other document or instrument delivered pursuant to this Agreement;

- (b) Notwithstanding the foregoing, the Partnership shall have no obligation to indemnify, defend, reimburse, release or save harmless any Partnership Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Partnership Indemnified Party.

13.2 **Opco Indemnity**

- (a) Opco shall indemnify, defend, reimburse, release and save harmless the Partnership, the GP, their respective Representatives and each of their successors and permitted assigns (each such Person, an “**Opco Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Opco Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) an inaccuracy or breach of any representation or warranty made by Opco in this Agreement, or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of Opco in this Agreement, or any other document or instrument delivered pursuant to this Agreement;
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of Opco occurring in connection with, incidental to or resulting from Opco’s obligations pursuant to this Agreement, or any other document or instrument delivered pursuant to this Agreement;
 - (iv) subject to the provisions of the LIL Remedies Agreement, any failure by Opco to duly and punctually pay in full all amounts claimed by the Partnership under **Article 3**; or
 - (v) any loss of any right of any Opco Indemnified Party against Opco in respect of any amounts payable by Opco hereunder for any reason whatsoever, including by operation of any bankruptcy, insolvency or similar such laws affecting creditors rights generally or general principles of equity.
- (b) Notwithstanding the foregoing, Opco shall have no obligation to indemnify, defend, reimburse, release or save harmless any Opco Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Opco Indemnified Party.

13.3 **Indemnification Procedure**

- (a) Generally - Each Party (each, an “**Indemnitor**”) shall indemnify and hold harmless the other Party and the other Persons as set forth in **Sections 13.1** or **13.2**, as

applicable, (each, an “**Indemnified Party**”) as provided therein in the manner set forth in this **Section 13.3**.

- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a “**Third Party Claim**”) or whether the Claim does not so arise (a “**Direct Claim**”). The failure to promptly give the Indemnitor Notice 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 of the Indemnified Party to promptly give Notice.

- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor 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 Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor 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 Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified 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.

- (d) 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 13.3** at the Indemnitor’s own expense and by the Indemnitor’s own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.

- (e) 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 this **Section 13.3**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of 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.

- (g) 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.

- (h) 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.

- (i) 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 the Indemnitor and an Indemnified Party, and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (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 participate in the defense of such Third Party Claim on behalf of the Indemnified Party, and all other provisions of this **Section 13.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

13.4 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured claim in accordance with the insurance coverage requirements set forth in **Article 9**, 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 14 LIMITATION OF DAMAGES

14.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 13** and **Article 14** of this Agreement shall apply to any and all Claims.

14.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall the Partnership be liable to Opco, nor shall Opco be liable to the Partnership, 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 the Partnership or Opco, as the case may be, with respect to matters relating to the LIL, in favour of a third party, shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 14.2**. For the purposes of this **Section 14.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

14.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to:

- (a) any insurance proceeds received or entitled to be received in relation to the Claim; and
- (b) 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.

14.4 Net Present Value

Except as set forth in the LIL Remedies Agreement,

- (a) in no event shall Opco be required to pay the net present value of the Rent due to be paid by Opco to the Partnership pursuant to the terms of this Agreement; and
- (b) to the extent that Rent at any time funds debt service of the Partnership only such portion of debt services shall be so funded as constitutes interest, fees and the instalment of principal which are due or about to become due as at such time. Any accelerated amount of principal is expressly excluded.

**ARTICLE 15
CONFIDENTIALITY**

15.1 Obligations of Confidentiality

The provisions of **Schedule 7** shall apply to Confidential Information.

15.2 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 16
ASSIGNMENT AND CHANGE OF CONTROL**

16.1 Partnership Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Section 16.1(d)**, the Partnership shall not assign its interest or rights under this Agreement, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Partnership Rights**").
- (b) Agreement to be Bound - No assignment may be made of the Partnership Rights by the Partnership unless such assignment includes all of the Partnership Rights and the Partnership obtains the written agreement of all Persons party to the

assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Partnership Rights.

- (c) Change of Control - A change of Control of a Partnership Affiliate Assignee that would result in such Partnership Affiliate Assignee no longer being an Affiliate of the Partnership will be deemed to be an assignment in contravention of the provisions of this **Section 16.1**.
- (d) Consent Requirement - An assignment of the Partnership Rights to a Person other than an Affiliate of the Partnership, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of Opco.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 16.1** will be null and void.

16.2 **Opco Assignment Rights**

- (a) General - Except to a Qualified Assignee and subject to **Section 16.2(d)**, Opco shall not assign its interest or rights under this Agreement, the LIL Remedies Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “Opco Rights”).
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Opco Rights by Opco unless such assignment includes all of the Opco Rights and Opco obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Opco Rights.
- (c) Change of Control - A change of Control of an Opco Affiliate Assignee that would result in such Opco Affiliate Assignee no longer being an Affiliate of Opco will be deemed to be an assignment of Opco Rights in contravention of this **Section 16.2**.
- (d) Consent Requirement - An assignment of the Opco Rights to a Person other than an Affiliate of Opco, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of the Partnership.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 16.2** will be null and void.

ARTICLE 17
REPRESENTATIONS AND WARRANTIES

17.1 **Opco Representations and Warranties**

Opco represents and warrants to the Partnership that, as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of NL and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement and the LIL Remedies Agreement;
- (b) the execution, delivery and performance of this Agreement and the LIL Remedies Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Opco 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) each one of this Agreement and the LIL Remedies Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement or the LIL Remedies 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 and the LIL Remedies 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 or the LIL Remedies 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 or the LIL Remedies Agreement; and
- (h) Opco is not a "non-resident" within the meaning assigned by the Income Tax Act.

17.2 Partnership Representations and Warranties

The Partnership represents and warrants to Opco that, as of the Effective Date:

- (a) it is a limited partnership duly organized, validly existing and in good standing under the laws of NL and is qualified to conduct its business to the extent necessary in

each jurisdiction in which it will perform its obligations under this Agreement and the LIL Remedies Agreement;

- (b) the GP is duly organized, validly existing and in good standing under the laws of NL;
- (c) the execution, delivery and performance of this Agreement and the LIL Remedies Agreement are within its powers, have been duly authorized by all necessary action on the part of the GP and the Partnership 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;
- (d) each one of this Agreement and the LIL Remedies Agreement has been duly executed and delivered on its behalf by the GP and constitutes a 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;
- (e) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (f) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement or the LIL Remedies Agreement;
- (g) 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 and the LIL Remedies 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 or the LIL Remedies Agreement, and (iii) the Regulatory Approvals;
- (h) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or the LIL Remedies Agreement;
- (i) as of the Effective Date, the LIL has been designed, engineered, procured, constructed and Commissioned in accordance with the LIL Project Description and Good Utility Practice;
- (j) the Partnership is the sole legal and beneficial owner of the LIL Assets and Rights and has the exclusive right to lease, transfer or assign to Opco the LIL Assets and Rights in accordance with the provisions of this Agreement;

- (k) the Partnership is a Canadian partnership with the meaning assigned by the Income Tax Act; and
- (l) other than Permitted Encumbrances, there are no Encumbrances against or attaching to the LIL Assets and Rights.

ARTICLE 18
MISCELLANEOUS PROVISIONS

18.1 **Notices**

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

- (a) to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL
A1B 0M5
Attention: Corporate Secretary
Fax: (709) 737-1782

- (b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

- (c) to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.
500 Columbus Drive
P.O. Box 13000, Station A
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

- (d) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(e) to NLH:

500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL
A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted 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. Each Party may change its address or fax number hereunder from time to time by giving Notice of such change to each of the other Parties.

18.2 **Prior Agreements**

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein.

18.3 **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.

18.4 **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.

18.5 Announcements

No announcement with respect to this Agreement shall be made by a Party without the prior approval of the other Parties. The foregoing shall not apply to (a) disclosure of this Agreement pursuant to **Section 15.2**, and (b) any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with each of the other Parties before making any such announcement and gives due consideration to the views of each of the other Parties with respect thereto. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

18.6 Relationship of the Parties

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship with the other Party. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of another Party for any purpose nor to permit a Party to enter into agreements or incur any obligations for or on behalf of another Party.

18.7 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.

18.8 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 and execute a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

18.9 Time of the Essence

Time shall be of the essence.

18.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by each Party. Until such time as the Financing is Paid in Full, without the written consent of the Collateral Trustee no amendment may be made to:

- (a) The definitions in **Section 1.1** (i) of “**Acquiror**”, “**Collateral Trustee**”, “**Commissioning Date**”, “**Financing**”, “**Financing Documents**”, “**Financing Parties**”, “**Force Majeure**”, “**Paid in Full**”, “**Qualified Assignee**” and “**Rent**”; or (ii) that are used in a definition referred to in **Section 18.10(a)(i)**;
- (b) **Sections 4.15, 4.16, 4.18 and 18.10**; or
- (c) **Articles 2, 3, 6, 10, 11, 12, 13 and 15**.

18.11 **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 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 such Party or otherwise reduce the obligations of the Party receiving such consent or approval.

18.12 **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.

18.13 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties arising out of this Agreement. All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

18.14 **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 (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

18.15 **Successors and Assigns**

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

18.16 **Affiliates of Nalcor**

Notwithstanding any other provision of this Agreement, the NL Crown shall be deemed to not be an Affiliate of Nalcor, Opco, NLH, the Partnership, the GP or Nalcor LP.


18.17 **NLH**

NLH is executing this Agreement solely for the purpose of and in order to accept the benefit of the rights granted to it under the terms of this Agreement and the LIL Remedies Agreement and to enforce same as may be required.

[The remainder of this page is intentionally left blank.]

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

**LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION**


By: 
Name: Gilbert Bennett
Title: Vice President

By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

LABRADOR-ISLAND LINK OPERATING CORPORATION

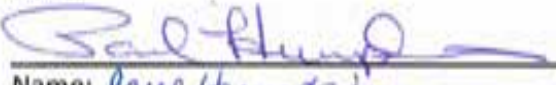
By: 
Name: Derrick Sturge
Title: VP, Finance & CFO

By: 
Name: Robert Hull
Title: GM (Commercial & Financing) & CRO

We have authority to bind the corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: 
Name: Robert Henderson
Title: VP, Newfoundland and Labrador Hydro

By: 
Name: Paul Humphries
Title: VP Systems operation + planning

We have authority to bind the corporation.

LIL LEASE

SCHEDULE 1

LIL PROJECT DESCRIPTION

SCHEDULE 1
LIL PROJECT DESCRIPTION

Section 1 Labrador - Island Link (LIL)

Overall HVdc system consists of a 900 MW HVdc Island Link between Labrador and Newfoundland.

Section 2 Construction Power

The following power supply sources will be used for construction power:

- Muskrat Falls: A 25 kV tap from the construction power system for the Muskrat Falls Generating Facility (see Construction Power)
- Forteau Point: A 25 kV tap from an existing distribution system located approximately 2.5 km away.
- Shoal Cove: A 25 kV tap from an existing distribution system located approximately 700m away.
- L'Anse Au Diable: A 14.4 kV tap from an existing distribution system located approximately 400 m away.
- Dowden's Point: A 14.4 kV tap from an existing distribution system located approximately 1.5 km away.
- Soldiers Pond: A 25 kV tap from an existing distribution system located approximately 4 km away.

Section 3 Construction Telecommunication Systems - Labrador-Island Link

Provision of telecommunications services and infrastructure during the construction phase to the end of the Project along the 315 kV HVac and the ± 350 kV HVdc transmission lines and associated construction camps, including the CF Extension Switchyard construction camp.

- Services along the transmission line rights-of-way
- Land Mobile Radio System (LMRS)
- Services available at the various remote campsites
- Data (corporate and personal)
- Telephony (corporate and personal)
- Network Management System (NMS)
- Closed Circuit Television (CCTV) and
- Security and Access Control System (SACS)

Section 4 Labrador Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- Situated on the south side of the Churchill River on a level fenced site.

- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 5 Electrode Line - Labrador

- An *electrode line* carrying two conductors with the first 370 km to be supported on the HVdc lattice steel towers from Muskrat Falls to Forteau Point and the remaining section from Forteau Point to L'Anse au Diable to be supported on a wood pole line.
- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 6 Electrode Labrador

- A shoreline pond *electrode* to be located at L'Anse au Diable on the Labrador side of the SOBI.
- Nominal monopolar rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.

Section 7 Labrador - Island Overland HVdc Transmission

- An HVdc overhead transmission line, ± 350 kV bi-pole, to connect the Muskrat Falls *Converter Station* to the Labrador Transition Compound at the Strait of Belle Isle and then to connect the Northern Peninsula Transition Compound at the Strait of Belle Isle to the Soldiers Pond *Converter Station*.
- Transmission line to carry both poles (single conductor per pole) and one OPGW. The Labrador section is to carry two *electrode* conductors from the Muskrat Falls *Converter Station* to Forteau Point (see 6310 Electrode Line - Labrador).
- The HVdc transmission line is to have a designed nominal power capacity of 900 MW; however, given the mono-polar operation criteria, each pole is to have a nominal rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- *Counterpoise* installed from station-to-station.
- Towers are to be galvanized lattice steel, with self-supported angles and dead ends, and guyed suspension towers.
- 50 year *Reliability Level Return Period* of loads, with respect to Nalcor Energy operating experience and LCP specific modeling and test programs.

Section 8 Transition Compound - Labrador

- Situated on a level fenced site at Forteau Point.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Overhead line to cable transition equipment.

- High-speed switching, control, protection, monitoring and communication equipment.

Section 9 Marine Crossing - SOBI - General

- ± 350 kV, 900 MW submarine cable system to transmit power across the SOBI in bipolar mode for 50-year design life, with capabilities to allow configuration in monopolar mode.
- Each cable to have a nominal rating of 1286 A (one pu per pole) and a transient rating of 2572 A (two pu per pole) for five minutes in mono-pole mode.
- Consists of three *mass impregnated* submarine cables and associated components, inclusive of one spare submarine cable.
- Land cables shall connect submarine cables to cable termination system within the transition compound.
- The route for the submarine cable(s) crossing shall be designed to meet the transmission, protection, reliability, and design life requirements, and give consideration to technical and economic optimization.
- Cables shall be adequately protected along the entire length of the crossing as required. Cable protection methodology will employ proven technologies only, and may include rock placement, trenching, horizontal directional drilling (HDD) and concrete mattresses.
- Where discrete protection application is required, protection measures shall be designed to meet the transmission and reliability requirements.

Section 10 Transition Compound - Northern Peninsula

- Situated on a level fenced site at Shoal Cove.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Cable to overhead line transition equipment.
- High-speed switching, control, protection, monitoring and communication equipment.

Section 11 Soldiers Pond Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.
- Situated next to the Soldiers Pond switchyard on the Avalon Peninsula on a level fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 12 Electrode Line - Newfoundland East

- An *electrode line* carrying two conductors generally follows the existing transmission ROW from Soldiers Pond to Conception Bay.
- Wood pole construction.

- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 13 Electrode Newfoundland East

- A shoreline pond *electrode* to be located at Dowden's Point on the east side of Conception Bay.
- Nominal rating of 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.

Section 14 Soldiers Pond Switchyard

- Situated on the north-east side of Soldiers Pond on a level, fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Electrical layout of the switchyard is to be in accordance with the proposed SLD.
- Switchyard to interconnect six 230 kV HVac transmission lines (three existing transmission lines looped in), the synchronous condensers and the Soldiers Pond *Converter Station*.

Section 15 Island System Upgrades East

- Three 175 MVAR high-inertia synchronous condensers at Soldiers Pond.
- 230 kV circuit breaker replacements including Holyrood, B1B11, B1L17, B12L17, B2B11, B2L42, B12L42, B2L18, B3B13 and B12B15 and Bay d'Espoir B4B5.
- 66 kV circuit breaker replacements including Hardwoods B7T1, B7T5 and B7B8 230 kV and 138 kV circuit breaker replacements.
- Replacement of conductors, 230 kV transmission line - Bay d'Espoir to Sunnyside.
- Splitting and Re-termination of three existing 230 kV transmission lines (TL201, TL217 and TL242) into the new Soldier's Pond Terminal Station forming six 230 kV line terminations. This requires construction of 6 x 1.6 km of 230 kV transmission line complete with overhead ground wire to provide lightening protection for the six new transmission line terminations.
- Upgrade of the protection and control systems at Hardwoods, Oxen Pond, Holyrood and Western Avalon Terminal Stations.

Section 16 Operations Telecommunications System - Island Link

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers.
- OTN Layer shall be the telecommunications backbone and utilize the OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN Layer equipment nodes shall be designed based upon the least total cost of ownership alternative.
- Convergence Layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the Access Layer subsystems for transmission on the OTN.

- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance.

The Island Transmission Link Telecommunication Assets specifically includes the following.

- HVdc OPGW fibre optics connecting
 - Muskrat Falls *Converter Station* to Forteau Point Transition Compound
 - Shoal Cove Transition Compound to Soldiers Pond *Converter Station*
- ADSS fibre optics connecting
 - Forteau Point Transition Compound to the L'Anse au Diable *Electrode*
 - Soldiers Pond *Converter Station* to Dowden's Point *Electrode*
- Fibre optic infrastructure shall also be used to connect
 - Forteau Point Transition Compound to Shoal Cove Transition Compound by optic fibres embedded in each power cable being installed across the SOBI
 - Soldiers Pond *Converter Station* to the NLH Energy Control Centre (ECC) in St. John's
 - Soldiers Pond *Converter Station* to the NLH Backup Control Centre (BCC)
- OTN Layer optical-electronics associated with the above referenced HVdc OPGW fibre optic interconnections.
- Convergence and Access Layers telecommunication systems associated with all of the above referenced fibre optic interconnections, except these telecommunication layers at MF.
- NLH ECC and BCC SCADA system upgrades

LIL LEASE

SCHEDULE 2

FORM OF ASSIGNMENT

**SCHEDULE 2
FORM OF ASSIGNMENT**

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ASSIGNMENT OF LIL LEASE

THIS ASSIGNMENT AGREEMENT is made effective the ● day of ●, 20__.

AMONG:

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated under the laws of NL, and a wholly-owned subsidiary of Nalcor ("**Opco**")

- and -

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, by its general partner, Labrador-Island Link General Partner Corporation (the "**Partnership**")

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act 2007* (Newfoundland and Labrador), and a wholly-owned subsidiary of Nalcor ("**NLH**")

- and -

<@>, a [type of entity and jurisdiction or statute of incorporation or formation], [*insert basis on which assignee is permitted*] (the "**Assignee**")

WHEREAS:

- A. Opco and the Partnership entered into the LIL Lease Agreement on _____, 2013 (the "**LIL Lease**"); and
- B. Opco and the Partnership entered into the LIL Remedies Agreement on _____, 2013 (the "**LRA**" and together with the LIL Lease, the "**Assigned Agreements**");

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 Agreements” has the meaning set forth in the recitals;

“Assignee” means [*] an Affiliate of **[Opco/the Partnership] [or a Holder]**, a Qualified Assignee of the Assignor;

“Assigned Rights” means the Assigned Agreements and **[Opco Rights][Partnership Rights]**;

“Assignor” means the **[Partnership/Opco or an Affiliate of the Partnership/Opco, 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;

“Consenting Parties” means the **[Opco/Partnership, of if applicable as a result of prior assignments, specified Affiliates]** and NLH;

“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**” means []; [NTD: Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmission assets and contracts transferred to it the Effective Date is to be the date when all of those transfers are effective.]

“**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;

“LIL Lease” has the meaning set forth in the recitals;

“LRA” has the meaning set forth in the recitals;

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

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“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**;

“Opco” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Opco Rights” has the meaning set forth in the LIL Lease;

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

“Partnership” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Partnership Rights” has the meaning set forth in the LIL Lease;

“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;

“Qualified Assignee” has the meaning set forth in the LIL Lease;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“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; 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 a Qualified Assignee

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 Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights as of the Effective Date and covenants and agrees with the Assignor and the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Rights. 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 Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of Assigned Rights

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the Assigned Rights. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor are in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights subject to the terms and conditions herein, and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Section 15.1(d) or 15.2(d) of the LIL Lease, as applicable, does not require consent to assignment.

2.5 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 2.5(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 2.7**.

2.6 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.6(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.

2.7 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.

2.8 Payment and Offset

- (a) Subject to **Section 2.8(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.

2.9 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 ●.

**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 Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary 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**][**Qualified Assignee**] of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

ARTICLE 4
DISPUTE RESOLUTION PROCEDURE

4.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 3 to the LIL Lease (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:

- (a) To Assignor:

 [•]

- (b) To Assignee:

 [•]

- (c) To Consenting Parties:

 [•]

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 Assigned 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.

[The 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][the general partner; the general partner has authority to bind the Assignor].

[ASSIGNEE]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Assignee].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Partnership].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/[corporation][the general partner; the general partner has authority to bind the Partnership].

LIL LEASE

SCHEDULE 3

LIL LAND AREA

SCHEDULE 3
LIL LAND AREA

- (a) That parcel of land containing an area of 0.306 hectares described and depicted in Schedule “A” and that parcel of land described and depicted in Schedule “B”, each schedules to a deed of conveyance from Perry Cleal, as vendor, to the Labrador-Island Limited Partnership, as represented by its general partner, Labrador-Island Link General Partner Corporation, as purchaser, dated April 8, 2013 and registered at the Registry of Deeds (NL) on April 10, 2013 as Registration Number 588614.
- (b) That parcel of land containing an area of 0.180 hectares described in Schedule “A” and depicted in Schedule “B” of the deed of conveyance from Susan Thorne, as vendor, to the Labrador-Island Limited Partnership, as represented by its general partner, Labrador-Island Link General Partner Corporation, as purchaser, dated April 15, 2013 and registered at the Registry of Deeds (NL) on April 15, 2013 as Registration Number 589481.
- (c) Crown Grant No. 51473 dated November 27, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, registered in the Registry of Crown Titles in the Department of Environment and Conservation at Volume 319, Folio 23, with respect to ALL THAT piece or parcel of land described in Schedule “A” attached thereto and as delineated in Schedule “B” attached thereto and containing an area of 21.8879 hectares, more or less.
- (d) Crown Grant No. 51474 dated November 27, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, registered in the Registry of Crown Titles in the Department of Environment and Conservation at Volume 319, Folio 24, with respect to ALL THAT piece or parcel of land described in Schedule “A” attached thereto and as delineated in Schedule “B” attached thereto and containing an area of 12.0450 hectares, more or less.
- (e) Crown Grant No. 51475 dated November 27, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, registered in the Registry of Crown Titles in the Department of Environment and Conservation at Volume 319, Folio 25, with respect to ALL THAT piece or parcel of land described in Schedule “A” attached thereto and as delineated in Schedule “B” attached thereto and containing an area of 0.9223 hectares, more or less.
- (f) Together with such other real property rights as may be acquired by the Partnership and made subject to the LIL Lease as are necessary for the Labrador-Island Link to run from Muskrat Falls in central Labrador, across the Strait of Belle Isle to Soldiers Pond on the island of Newfoundland as contemplated by the LIL Project Description, and to provide Opco with access thereto.

LIL LEASE

SCHEDULE 4

STATUTORY EASEMENTS

SCHEDULE 4
STATUTORY EASEMENTS

- (a) Statutory Easement No. 143195 dated November 27, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, with respect to ALL THAT piece or parcel of land situate and being in Labrador, running from Muskrat Falls to Forteau, in the Province of Newfoundland and Labrador, Canada, more particularly shown on the Plan of Survey as registered in the Registry of Crown Titles in the Department of Environment and Conservation as Special Plan # 456 and containing an area of 2,380 hectares, more or less;
- (b) Statutory Easement No. 143344 dated November 28, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, with respect to ALL THAT that piece or parcel of land described in Schedule "A" attached thereto and as delineated in Schedule "B" attached thereto and containing an area of 5.8495 hectares, more or less;
- (c) Statutory Easement No. 143603 dated November 27, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, with respect to ALL THAT piece or parcel of land situate and being on the island of Newfoundland, running from Shoal Cove to Soldiers Pond, in the Province of Newfoundland and Labrador, Canada, more particularly shown on the Plan of Survey as registered in the Registry of Crown Titles in the Department of Environment and Conservation as Special Plan # 457 and containing an area of 4,143.5 hectares, more or less;
- (d) Statutory Easement No.143619 dated November 28, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, with respect to ALL THAT piece or parcel of land described in Schedule "A" attached thereto and as delineated in Schedule "B" attached thereto and containing an area of 1.0441hectares, more or less;
- (e) Statutory Easement No.143625 dated November 28, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, with respect to ALL THAT piece or parcel of land described in Schedule "A" attached thereto and as delineated in Schedule "B" attached thereto and containing an area of 5.3233 hectares, more or less;
- (f) Statutory Easement No. 144447 dated November 28, 2013 issued by The Minister of Environment and Conservation, acting on behalf of Her Majesty in right of Newfoundland and Labrador, with respect to ALL THAT piece or parcel of land described in Schedule "A" attached thereto and as delineated in Schedule "B" attached thereto and containing an area of 0.8106 hectares, more or less; and
- (g) together with such other real property rights as may be acquired by the Partnership and made subject to the LIL Lease as are necessary for the Labrador-Island Link to run from Muskrat Falls in central Labrador, across the Strait of Belle Isle to Soldiers Pond on the island

of Newfoundland as contemplated by the LIL Project Description, and to provide Opco with access thereto.

LIL LEASE

SCHEDULE 5

LIL TANGIBLE PERSONAL PROPERTY

SCHEDULE 5
LIL TANGIBLE PERSONAL PROPERTY

Nil.

LIL LEASE

SCHEDULE 6

DISPUTE RESOLUTION PROCEDURE

**SCHEDULE 6
DISPUTE RESOLUTION PROCEDURE**

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SCHEDULE 6
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:

“Agreement” means the agreement to which this Schedule is attached;

“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 Parties” 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 by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

“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 Agreement.

2.3 Interim Measures

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

2.4 Mediator or Arbitrator as Witness

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

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by the Party requesting a review under this **Section 3** by Notice to the other Parties (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 no 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 any 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 forth 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) a Party gives Notice to the other Parties 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 no 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) a Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Parties (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, any Party may elect, by giving notice thereof to the other Parties, 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 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 any other agreement to which they are all parties, 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 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

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

Section 6 **Expert Determination Procedure**

6.1 **Referral for Expert Determination**

A Party (the “**Referring Party**”) may by Notice to another 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 the Agreement, 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 forth 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 Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

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APPENDIX A

TO

DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

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.

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

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(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 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 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

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.

LIL LEASE

SCHEDULE 7

CONFIDENTIAL INFORMATION

**SCHEDULE 7
CONFIDENTIAL INFORMATION**

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SCHEDULE 7
CONFIDENTIAL INFORMATION

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

“Agreement” means the agreement to which this Schedule is attached;

“ATIPPA” means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

“Authorized Purpose” means a purpose associated with the rights and obligations set forth in the Agreement;

“ECA” means the *Energy Corporation Act* (Newfoundland and Labrador);

“Lender Recipient” has the meaning set forth in **Section 2.3**;

“LIL Lease” means an agreement between the Partnership and Opco to effect the lease, assignment and license, as applicable, of the LIL Assets and Rights by the Partnership to Opco;

“Representatives” means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

“Schedule” means this **Schedule 2 - Confidential Information**;

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

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

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

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

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the LIL Lease Term (the “**Term**”), provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

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

- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;
- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

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

Section 3 Acknowledgments

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the

Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;

- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and
- (d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

Section 4 Disclosures Required By Law

4.1 Opco and its Affiliates and the Partnership and its Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. The Parties acknowledge that Opco and its Affiliates and the Partnership and its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 Opco and the Partnership hereby acknowledge and agree that the Confidential Information disclosed by the other is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to Opco or the Partnership, as applicable. It is further acknowledged and agreed that each of Opco and the Partnership has represented to the other that the Confidential Information disclosed is treated consistently in a confidential manner by them and is customarily not provided to their competitors. Therefore, pursuant to s.5.4(1)(b) of the ECA, Opco and the Partnership shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure and be entitled to be represented and make arguments in support of non-disclosure.

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

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;

- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;
- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including **Section 4.3**, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Parties and their Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding among the Parties or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

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

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP

and

LABRADOR-ISLAND LINK OPERATING CORPORATION

and

NEWFOUNDLAND AND LABRADOR HYDRO

LIL REMEDIES AGREEMENT

November 29, 2013

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SCHEDULE 1 OPCO SECURITY AGREEMENT

SCHEDULE 2 DISPUTE RESOLUTION PROCEDURE

LIL REMEDIES AGREEMENT

THIS LIL REMEDIES AGREEMENT is made effective the 29th day of November, 2013 (the “**Effective Date**”)

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner Labrador-Island Link General Partner Corporation (the “**Partnership**”)

– and –

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of NL, and a wholly-owned subsidiary of Nalcor (“**Opco**”)

– and –

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

WHEREAS:

- A. the Partnership, Opco and NLH are parties to the LIL Lease and the TFA;
- B. the LIL Lease and the TFA are fundamental to the use, operation, maintenance and Financing of the LIL; and
- C. the Parties have agreed to enter into this Agreement to set forth specific remedies arising from certain defaults under the LIL Lease and the TFA;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants 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:

“**2.4(a) Notice**” has the meaning set forth in **Section 2.4(a)**;

“2.5(a) Notice” has the meaning set forth in **Section 2.5(a)**;

“2.5(c) Notice” has the meaning set forth in **Section 2.5(c)**;

“2.6(a) Notice” has the meaning set forth in **Section 2.6(a)**;

“Acquiror” has the meaning set forth:

- (a) in the case of Opco, in the Opco Step-In Agreement; or
- (b) in the case of the Partnership, in the Partnership Step-In Agreement;

“Adequacy” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria and taking into account scheduled and unscheduled outages of system elements;

“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;

“Agent Party” has the meaning set forth:

- (a) in the case of Opco in the Opco Step-In Agreement;; or
- (b) in the case of the Partnership, in the Partnership Step-In Agreement;

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

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

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

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated

at voltages of 100 KV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

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

“CFLCo” means Churchill Falls (Labrador) Corporation, Limited, a corporation incorporated pursuant to the laws of Canada, and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River, in the vicinity of Churchill Falls, NL;

“Canada” means Her Majesty the Queen in Right of Canada;

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

“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;

“Collateral Agent” means the Toronto Dominion Bank, in its capacity as collateral agent under the Financing Documents, and includes any successor thereof in such capacity;

“Commissioning” means the testing activities required to demonstrate the LIL is ready to transmit Energy and Capacity in accordance with the LIL Project Description, and **“Commission”** and **“Commissioned”** have correlative meanings;

“Commissioning Date” means the date on which all of the following has occurred:

- (a) the Commissioning has been completed;
- (b) NLSO has accepted in writing that the Commissioning has been completed; and
- (c) the Financing Parties have accepted in writing that the Commissioning has been completed.

“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 a correlative meaning);

“**Development Activities**” means all activities and undertakings necessary to design, engineer, procure and construct the LIL in accordance with the LIL Project Description, and to Commission the LIL, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, the product of such activities and undertakings, and the resolution of all Claims and disputes related thereto;

“**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 6.1(a)**;

“**Effective Date**” has the meaning set forth at the top of page 1 of this Agreement;

“**Emera**” means Emera Inc., a company incorporated pursuant to the laws of NS, and includes its successors;

“**Emera NL**” means ENL Island Link Incorporated, a corporation incorporated pursuant to the laws of NL and a wholly owned subsidiary of Emera, and includes its successors;

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

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

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

“**Financing Documents**” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements, and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

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

“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;

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

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, Reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

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

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

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

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

- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

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

“LIL” means equipment and facilities comprising a HVdc transmission line and all related components, including converter stations, synchronous condensers, and terminal, telecommunications and switchyard equipment, constructed between the LTA and the Island Interconnected System including:

- (a) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent;
- (b) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission lines; and
- (c) all mechanical, electrical and other systems and other technology installed under or upon any of the foregoing;

“LIL LP Agreement” means the agreement between Labrador-Island Link General Partner Corporation, as general partner, and Labrador-Island Link Holding Corporation, as limited partner, dated July 31, 2012, which establishes the Partnership;

“LIL Assets Agreement” means the agreement of even date herewith between the Partnership and Opco relating, among other things, to the lease, assignment and licence, as applicable, of the LIL Assets and Rights by the Partnership to Opco, and the assumption by Opco of the operation and maintenance of the LIL;

“LIL Assets and Rights” has the meaning set forth in the LIL Lease;

“LIL Land Area” has the meaning set forth in the LIL Lease;

“LIL Lease” means the agreement of even date herewith between the Partnership and Opco (and NLH for certain limited purposes) by which the LIL Assets and Rights are leased, assigned or licenced, as applicable, by the Partnership to Opco;

“LIL Lease Term” has the meaning set forth in the LIL Lease;

“LTA” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant and the LIL;

“LIL Project Description” means a compilation of the fundamental engineering criteria, data and components on the basis of which the LIL is to be constructed as set forth in Schedule 1 of the TFA;

“LIL Real Property Interests” has the meaning set forth in the LIL Lease;

“**LIL Tangible Personal Property**” has the meaning set forth in the LIL Lease;

“**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;

“**MF Plant**” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be owned and operated by Muskrat;

“**MPPA**” means the Multi-Party Pooling Agreement to be entered into between NLSO and the owners or operators of transmission facilities comprising the NL Transmission System pursuant to which NLSO shall exercise operational control of, and provide transmission service over, the NL Transmission System;

“**MW**” means megawatt;

“**MWh**” means MW hour;

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

“**Muskrat**” means Muskrat Falls Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“**NL**” means the Province of Newfoundland and Labrador;

“**NL Crown**” means Her Majesty in Right of NL;

“**NL Transmission System**” means electricity transmission assets in NL with a voltage level greater than or equal to 230 KV to be pooled under the MPPA;

“**NLH**” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“**NLSO**” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH responsible for the safe and reliable operation of the Bulk Electric System or a functionally separate division of NLH performing this function, and includes any of its successors;

“**NS**” means the Province of Nova Scotia;

“**Nalcor**” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“**Nalcor LP**” means Labrador-Island Link Holding Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“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;

“Notice” means a communication required or contemplated to be given by a Party to another Party under this Agreement, which communication shall be given in accordance with **Section 7.1**;

“O&M Activities” means all activities and undertakings performed by or on behalf of Opco after the Commissioning Date that are required to operate, maintain and sustain the LIL in accordance with Good Utility Practice, including administration and the replacement or overhaul of major components which do not extend the Service Life and, for greater certainty, includes Sustaining Activities;

“Opco” has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Opco O&M Activity Default” has the meaning set forth in **Section 2.6(a)**;

“Opco Project Operating Account” has the meaning set forth in the Financing Documents;

“Opco Security Agreement” means a general security agreement in the form attached at **Schedule 1**;

“Opco Step-In Agreement” means the Step-In Agreement relating to Opco in the form attached as Schedule 5 to the TFA;

“Opco Transmission Capability Default” has the meaning set forth in **Section 2.6(a)**;

“Operating and Maintenance Costs” means, without duplication, all costs and expenses incurred for operation and maintenance of the LIL in accordance with the LIL Lease after the Commissioning Date, including costs of O&M Activities which are not Sustaining Activities, administration costs for Opco, any Taxes payable by or on behalf of Opco or in respect of amounts payable to Opco (including for greater certainty, any Taxes payable by Opco and required to be withheld by a Person on the payment of an amount to Opco), net of any such Taxes which are recovered, but grossed up and adjusted to the extent necessary so that the amount of any amounts payable to Opco which are retained by Opco, net of any such Taxes, shall equal the amount which Opco would have retained if such Taxes were not payable by or on behalf of Opco or in respect of amounts payable to Opco, any costs and expenditures related to insurance, including any deductibles, any amount payable on account of a penalty imposed by Applicable Law or contract, any amount payable on account of a judgment rendered against Opco, and expressly excluding in all instances Rent and any costs, expenses or other amounts included in Rent;

“Operating Year” means (a) a calendar year during the term of this Agreement except that the first operating year will commence on the Commissioning Date and end on December 31 of the calendar year in which such date occurs, and the last operating year will end on the date of termination or expiry of this Agreement, or (b) such other fiscal period as may be mutually agreed to by the Parties;

“PUB” means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

“Paid in Full” means in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment to such Person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors’ rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

“Participation Clause” has the meaning set forth in **Section 6.1(c)**;

“Parties” means the Partnership, Opco and NLH, and **“Party”** means one of them;

“Partners” has the meaning set forth in the LIL LP Agreement;

“Partnership” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“Partnership Step-In Agreement” means the Step-In Agreement relating to the Partnership in the form attached as Schedule 5 to the LIL Assets Agreement;

“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;

“Qualified Partner” has the meaning set forth in the LIL LP Agreement;

“Redemption Value” means, at any time, a dollar value which is the sum of the following;

- (a) the cost of all payments as are required to cause the Financing and the Financing associated with the Sustaining Costs to each be Paid in Full, plus
- (b) all legal, advisory, transaction and administrative costs associated with **Section (a)**;

“Refinance” means to extend, renew or refinance any indebtedness where the amount of such indebtedness outstanding on the date of such extension, renewal or refinancing is not increased;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

“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;

“Reliability” means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security;

“Reliability Standards” means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

“Rent” has the meaning set forth in the LIL Lease;

“Retired Limited Partner” has the meaning set forth in the LIL LP Agreement;

“Security” means the ability of an electrical system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

“Service Life” means the period of time immediately following the Commissioning Date, as designated by an Authorized Authority, from time to time, during which the LIL can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LIL Project Description;

“Standards Authority” means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the LIL;

“Sustaining Activities” means, with respect to O&M Activities, those activities and undertakings of a capital nature which Opco determines after the Commissioning Date are necessary to sustain the LIL in proper operating condition during its Service Life;

“Sustaining Costs” means the costs incurred as a result of Sustaining Activities, including an allowance for funds used during construction consistent with the then current regulatory practice in NL;

“TFA” means the agreement of even date herewith among NLH, Opco and the Partnership relating, among other things, to the recovery from NLH of costs of the LIL incurred by Opco and the Partnership;

“TFA Payments” has the meaning set forth in the TFA;

“TFA Term” has the meaning set forth in the TFA;

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

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

“**Transmission Capability**” means the ability to transmit Energy across a set of transmission facilities and, in the case of the LIL, means the ability of the LIL to transmit Energy between the LTA and the Island Interconnected System near Soldiers Pond on the Avalon Peninsula; and

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**”, “**Section**”, “**Schedule**” or “**Appendix**” followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (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 GAAP, unless expressly stated otherwise.

- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement 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 Effective Date, 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 set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “**approved**”, “**decided**” or “**determined**” by a Party or requires a Party’s “**consent**”, then (i) such approval, decision, 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 - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable

efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.

- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement, LIL Lease and TFA

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of (a) a Schedule or any document delivered pursuant to this Agreement, (b) the LIL Lease, or (c) the TFA, the provision of the body of this Agreement shall prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 6**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

- | | | |
|------------|---|------------------------------|
| Schedule 1 | – | Opco Security Agreement |
| Schedule 2 | – | Dispute Resolution Procedure |

ARTICLE 2 REMEDIES

2.1 General

- (a) Remedies - The remedies set forth in this **Article 2** are, unless expressly stated otherwise, in addition to and not in substitution for the remedies set forth in the LIL Lease and the TFA.

- (b) NLH - Other than expressly provided herein, NLH shall under no circumstances assume or be responsible for any obligations of Opco to any other Person whether contractual or otherwise.

2.2 Liquidated Damages

Each of the Parties agrees that to the extent any damages required to be paid under this **Article 2** are expressly stated to be liquidated damages, it has 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 or amount of such Losses. Each of the Parties agrees that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect all Parties from uncertainties. The obligation of a Party to pay and of a Party to accept such liquidated damages, as applicable, shall be legally enforceable and binding on the Parties.

2.3 Financing

The transfers, assignments, mortgages, charges and security interests set forth in this Agreement are in all respects subject and subordinate to the transfers, assignments, mortgages, charges and security interests granted by the Financing Documents.

2.4 Partnership and Opco Specific Remedies upon NLH Default

- (a) Failure to make TFA Payments - If NLH is in default of its obligation set forth in the TFA to make the TFA Payments, and as a consequence thereof Opco is in default of its obligation set forth in the LIL Lease to pay Rent, provided the Partnership is in material compliance with its obligations under the LIL Lease, it may give Notice ("**2.4(a) Notice**") to Opco and to NLH that it intends to invoke its rights under this **Section 2.4(a)**. Subject to **Section 2.4(b)**, if, within 10 days from the delivery of such Notice, such defaults of NLH and Opco are not rectified and all Losses of the Partnership arising from such defaults have not been paid to the Partnership:
- (i) NLH shall forthwith pay to Opco as liquidated damages a lump sum amount equal to the Redemption Value as at the date of payment of such lump sum;
 - (ii) on receipt by Opco of payment pursuant to **Section 2.4(a)(i)**, the TFA shall terminate without any further action on the part of Opco or NLH, and without further liability of Opco or NLH;
 - (iii) Opco shall forthwith pay to the Partnership as liquidated damages a lump sum amount equal to the Redemption Value as at the date of payment of the lump sum under **Section 2.4(a)(i)**; and
 - (iv) on receipt by the Partnership of payment pursuant to **Section 2.4(a)(iii)**;
 - (A) Opco shall assign, transfer and surrender to the Partnership the LIL and the LIL Assets and Rights in accordance with Section 11.3(a) of

the LIL Lease, and on satisfaction of this obligation the LIL Lease shall terminate without any further action on the part of the Partnership or Opco;

- (B) neither the Partnership nor Opco shall have any further liability whatsoever to the other under or in respect of the LIL Lease;
 - (C) the Partnership shall notify the NLSO of the receipt of payment from Opco in order for NLSO to account for such payments through credits against NLH's payment obligations arising under any transmission service agreements to which NLH may be a Party; and
 - (D) the Partnership shall thereafter operate the LIL and have the rights and perform the obligations of the owner and operator of the LIL as provided for in the MPPA.
- (b) Dispute Resolution - Opco may not terminate the TFA, and the Partnership may not terminate the LIL Lease, if NLH is contesting a default of its obligation to make TFA Payments under the TFA as a dispute, and the matter has not been finally determined in accordance with the dispute resolution procedure under the TFA.
- (c) Security Agreement - As security for the payment by Opco to the Partnership under **Section 2.4(a)(iii)**, Opco agrees to enter into an Opco Security Agreement and transfer, assign, mortgage and charge the TFA to and in favour of the Partnership, and grant to the Partnership a security interest in the TFA within the meaning of the *Personal Property Security Act* (Newfoundland and Labrador).
- (d) Sole and Exclusive Right, Remedy and Recourse - If, in accordance with **Section 2.4(a)**,
- (i) Opco recovers liquidated damages from NLH pursuant to **Section 2.4(a)(i)** and the TFA is terminated, such remedy shall be Opco's sole and exclusive right, remedy and recourse for the NLH default of its obligation to make the TFA Payments in accordance with the provisions of the TFA; and
 - (ii) the Partnership recovers liquidated damages from Opco pursuant to **Section 2.4(a)(iii)**, such remedy shall be the Partnership's sole and exclusive right, remedy and recourse for the Opco default of its obligation to pay Rent in accordance with the provisions of the LIL Lease.

2.5 NLH and Opco Specific Remedies upon Partnership Default

- (a) Failure to Pay Sustaining Costs - If the Partnership is in default of its obligation under the LIL Lease to pay Sustaining Costs, provided NLH is in material compliance with its obligations under the TFA, it may give Notice ("**2.5(a) Notice**") to Opco and the Partnership that it intends to invoke its rights under this **Section 2.5(a)**. Subject to **Section 2.5(g)**, if, within 10 days from delivery of such 2.5(a) Notice, such default of

the Partnership is not rectified and all Losses arising from such defaults have not been paid to Opco and NLH, NLH shall have the right, exercisable by delivery of a Notice to Opco and the Partnership, to require Opco to continue to carry out the Sustaining Activities and NLH shall pay to Opco the applicable Sustaining Costs, which payments shall be made by NLH directly to the Opco Project Operating Account. From and after the delivery of such Notice by NLH, the Partnership shall no longer have the right under the LIL Lease to fund and earn a return (as such return is provided for in the LIL Lease) on such applicable Sustaining Costs. The Partnership shall continue to have the right to fund and earn a return (as such return is provided for in the LIL Lease) on future Sustaining Costs.

- (b) Failure to Provide Quiet Enjoyment (Partnership) - If the Partnership is in default of its obligations as set forth in Section 3.10 of the LIL Lease to provide quiet enjoyment of the LIL Land Area (subject to the LIL Real Property Interests) and the LIL Tangible Personal Property to Opco, and such default has the result that the Transmission Capability of the LIL is not available at the full rated capacity of the LIL, NLH shall immediately be entitled to exercise all of its rights, remedies or recourse available at law or in equity (including specific performance or a declaration to enforce the Partnership's obligations) to rectify the breach and recover all of its Losses. Notwithstanding the foregoing, until the Financing is Paid in Full, NLH shall not have the right, remedy or recourse to terminate the LIL Lease for any reason without the consent of the Financing Parties.

- (c) Failure to Provide Quiet Enjoyment (Financing Party, Agent Party or Acquiror)
 - (i) If, as a result of any Agent Party's or Acquiror's wilful act or omission or its gross negligence, the Partnership is in default of its obligation as set forth in Section 3.10(a) or (c) of the LIL Lease to provide quiet enjoyment of the LIL Land Area (subject to the LIL Real Property Interests) and the LIL Tangible Personal Property to Opco, and such default has the result that for 24 consecutive hours or for 24 non-consecutive hours in any seven day period the Transmission Capability of the LIL is not available at the full rated capacity of the LIL, provided NLH is in material compliance with its obligations under the TFA, it may give Notice ("**2.5(c) Notice**") to Opco and the Partnership that it intends to invoke its rights under this **Section 2.5(c)**.

 - (ii) Subject to **Section 2.5(g)** if, within two days from the delivery of the 2.5(c) Notice, the default by the Partnership is not rectified and all Losses arising from such default paid to NLH and Opco:
 - (A) NLH may suspend payment of the TFA Payments to Opco; such TFA Payments which are suspended and not paid or are accrued during the period of suspension will no longer be required to be paid by NLH; and NLH shall have no further obligations with respect thereto; and

- (B) Opco may suspend payment of the Rent to the Partnership; such Rent which is suspended and not paid or accrued during the period of suspension will no longer be required to be paid by Opco; and Opco shall have no further obligations with respect thereto.
- (d) Recommencement of TFA Payments - If a Financing Party, Agent Party or Acquiror cures the default and restores to Opco quiet enjoyment of the LIL such that Transmission Capability of the LIL is restored to NLH at the full rated capacity of the LIL, from the date of such restoration NLH shall resume TFA Payments in accordance with the TFA, and Opco shall resume Rent payments in accordance with the LIL Lease.
- (e) Termination of TFA – Subject to **Section 2.5(g)** if, as a result of any Agent Party’s or Acquiror’s wilful act or omission or its gross negligence, the Partnership is in default of its obligation as set forth in Section 3.10(a) or (c) of the LIL Lease to provide quiet enjoyment of the LIL Land Area (subject to the LIL Real Property Interests) and the LIL Tangible Personal Property to Opco, and such default has the result that for 10 consecutive days or for 10 non-consecutive days in any 90 day period the Transmission Capability of the LIL is not available at the full rated capability of the LIL or if there are two or more breaches of **Section 2.5(c)**, provided NLH is in material compliance with its obligations under the TFA, NLH may terminate the TFA by giving Notice to Opco and the Partnership. On the delivery of such Notice to Opco and the Partnership, the TFA shall terminate and thereafter the parties to the TFA shall have no further obligations to each other with respect thereto.
- (f) Termination of Lease - If NLH terminates the TFA pursuant to **Section 2.5(e)**, Opco may terminate the LIL Lease by giving notice to the Partnership and NLH. The LIL Lease shall terminate upon (i) delivery of such Notice to the Partnership and NLH, and (ii) the assignment, transfer and surrender to the Partnership of the LIL and the LIL Assets and Rights in accordance with Section 11.3(a) of the LIL Lease. Opco shall thereafter have no further obligations with respect to the LIL Lease.
- (g) Dispute Resolution - NLH may not exercise its rights under **Section 2.5(a)** if the Partnership is contesting a default of its obligation to pay Sustaining Costs under the LIL Lease and the matter has not been finally determined in accordance with the dispute resolution procedure of the LIL Lease. NLH may not suspend TFA Payments pursuant to **Section 2.5(c)** or terminate the TFA pursuant to **Section 2.5(e)** if the Partnership is contesting a default of its covenant to provide quiet enjoyment of the LIL to Opco under the LIL Lease as a dispute, and the matter has not been finally determined in accordance with the dispute resolution procedure of the LIL Lease.
- (h) Sole and Exclusive Right, Remedy and Recourse -

 - (i) If NLH exercises its rights under **Section 2.5(a)**, it shall be the sole and exclusive right, remedy and recourse of NLH for the default of the Partnership to pay such Sustaining Costs.

- (ii) The suspension of TFA Payments by NLH or the termination of the TFA by NLH, as applicable, together with the right of NLH to initiate legal action against the Person responsible for the wilful act or omission or gross negligence to recover its Losses, shall be the sole and exclusive right, remedy and recourse of NLH for the Partnership's default of its covenant to provide quiet enjoyment of the LIL to Opco pursuant to Section 3.10(a) or (c) of the LIL Lease resulting from the wilful act or omission or the gross negligence of any Financing Party, Agent Party or Acquiror.
- (iii) The suspension of the payment of Rent by Opco or the termination of the LIL Lease by Opco, as applicable, together with the right to initiate legal action against the Person responsible for the wilful act or omission or gross negligence to recover its Losses, shall be the sole and exclusive right, remedy and recourse of Opco for the Partnership's default of its covenant to provide quiet enjoyment of the LIL to Opco pursuant to Section 3.10(a) or (c) of the LIL Lease resulting from the wilful act or omission or gross negligence of any Financing Party, Agent Party or Acquiror.

2.6 Partnership and NLH Specific Remedies upon Opco Default

(a) Opco Failure to Carry Out O&M Activities - If:

- (i) Opco is in default of its obligation set forth in the LIL Lease or the TFA to carry out the O&M Activities in accordance with the applicable provisions of the LIL Lease or the TFA ("**Opco O&M Activity Default**"); or
- (ii) Opco is in default under Sections 12.1 (b), (c), (d) or (e) of the LIL Lease, other than such default as is described in **Section 2.6(a)(i)** hereof, and such default has the result that for 24 consecutive hours or for 24 non-consecutive hours in any seven day period the Transmission Capability of the LIL is not available at the full rated capacity of the LIL ("**Opco Transmission Capability Default**"),

provided NLH is in material compliance with its obligations under the TFA, it may give Notice ("**2.6(a) Notice**") to Opco and the Partnership that it intends to invoke its rights under this **Section 2.6(a)**. Subject to **Section 2.6(d)**, if, within 10 days after delivery of the 2.6(a) Notice with respect to an Opco O&M Activity Default, or within two days of delivery of the 2.6(a) Notice with respect to an Opco Transmission Capability Default, the default of Opco is not rectified and all Losses arising from such default paid to NLH:

- (iii) NLH may, on delivery of Notice to Opco and the Partnership, assume the rights and perform the obligations of Opco under the LIL Lease, excluding however all then accrued obligations of Opco (including its obligation to pay Taxes). NLH shall have the right, exercisable by delivery of Notice to Opco at any time and from time to time thereafter, to require Opco to satisfy any

such accrued obligations or to reimburse NLH for any such accrued obligations which in its discretion it has elected to satisfy;

- (iv) NLH shall have the right to enforce and enjoy all the rights that Opco has or may have under the LIL Lease to the same extent and in the same manner as if it were an original party thereto in the place of Opco;
 - (v) Opco shall immediately provide to NLH all necessary information, passwords and access keys necessary for NLH to assume and perform the obligations of Opco under the LIL Lease;
 - (vi) on the assumption by NLH of the rights and obligations of Opco under the LIL Lease pursuant to **Section 2.6(a)(iii)**, Opco directs NLH to pay directly to the Partnership the TFA Payments, other than the portion of the TFA Payments which represents Rent already payable by NLH while it has assumed the LIL Lease pursuant to **Section 2.6(a)(iii)** and which Rent shall cease to form part of the TFA Payments during such period, required to be paid by NLH to Opco under the TFA. The Partnership agrees to reimburse to NLH the portion of the TFA Payments received from NLH which are attributable to Operating and Maintenance Costs;
 - (vii) at any time following the assumption by NLH of the rights and obligations of Opco pursuant to **Section 2.6(a)(iii)**, NLH may, on not less than five days Notice to Opco and the Partnership, assign back to Opco the rights and obligations of Opco under the LIL Lease whereupon,
 - (A) Opco shall resume the exercise of its rights and the performance of its obligations under the LIL Lease;
 - (B) NLH shall cease making TFA Payments to the Partnership, and shall resume the payment of TFA Payments to Opco in accordance with the TFA;
 - (viii) the Partnership acknowledges the rights of NLH under this **Section 2.6(a)** and agrees to execute such documents as may be required in order to give effect to the rights set forth herein; and
 - (ix) until the TFA is terminated, the provisions of this **Section 2.6(a)** shall apply, *mutatis mutandis*, for each and every Opco O&M Activity Default or Opco Transmission Capability Default.
- (b) Partnership Right to Carry Out O&M Activities - If Opco is in default of its obligation set forth in the LIL Lease to carry out the O&M Activities in accordance with the applicable provisions of the LIL Lease and NLH has not invoked its rights as set forth in **Section 2.6(a)**, provided the Partnership is in material compliance with its obligations under the LIL Lease, the Partnership may give Notice to Opco and NLH that it intends to assume the rights and obligations of Opco under the LIL Lease with

respect to the O&M Activities. Subject to **Section 2.6(d)**, on receipt of such Notice, NLH shall pay the Operating and Maintenance Costs (with the Partnership being substituted for Opco in such definition and those defined terms embedded therein) for the O&M Activities directly to the Partnership.

- (c) Failure to Pay Rent - If NLH has made the TFA Payments to Opco in accordance with the provisions of the TFA and Opco is in default of its obligations set forth in the LIL Lease to pay Rent to the Partnership, provided the Partnership is in material compliance with its obligations under the LIL Lease, the Partnership may give Notice to Opco and NLH that it intends to invoke its rights under this **Section 2.6(c)**. Subject to **Section 2.6(d)**, if, within 10 days from the delivery of the Notice, the default of Opco is not rectified and all Losses arising from such default have not been paid to the Partnership, the Partnership may require Opco to assign to NLH, as an Affiliate of Opco, the LIL Lease in accordance with the assignment provisions of the LIL Lease, and NLH shall be required to thereafter assume and perform the obligations of Opco set forth in the LIL Lease.
- (d) Dispute Resolution -
- (i) NLH may not invoke its rights under **Section 2.6(a)** with respect to an Opco O&M Activity Default, and assume the rights and obligations of Opco under the LIL Lease, if Opco is contesting a failure to carry out the O&M Activities under the LIL Lease or TFA, as applicable, as a dispute and the matter has not been finally determined in accordance with the dispute resolution procedure of the LIL Lease or TFA, as applicable.
 - (ii) In the event of an Opco Transmission Capability Default, notwithstanding any dispute that may be initiated by Opco concerning the determination of an Opco Transmission Capability Default, NLH shall be entitled to exercise its rights under **Section 2.6(a)**. If the dispute resolution procedure under the LIL Lease determines that Opco had not committed an Opco Transmission Capability Default, then NLH shall return and Opco shall assume, its rights and obligations under the LIL Lease in accordance with **Section 2.6(a)(vii)(A)**, and NLH shall pay to Opco any Losses incurred by Opco resulting from NLH's improper exercise of its rights under **Section 2.6(a)**.
 - (iii) The Partnership may not assume the rights and obligations of Opco under the LIL Lease with respect to the O&M Activities pursuant to **Section 2.6(b)** if Opco is contesting a failure to carry out the O&M Activities under the LIL Lease as a dispute and the matter has not been finally determined in accordance with the dispute resolution procedures of the LIL Lease.
 - (iv) The Partnership may not require Opco to assign to NLH the LIL Lease, and NLH to assume and perform the obligations of Opco set forth in the LIL Lease pursuant to **Section 2.6(c)**, if Opco is contesting a failure to pay Rent under the LIL Lease as a dispute and the matter has not been finally determined in accordance with the dispute resolution procedures of the LIL Lease.

- (e) Security Agreement - As security for the ability of NLH to exercise the rights granted to it as set forth in **Section 2.6(a)**, Opco agrees to enter into an Opco Security Agreement and transfer, assign, mortgage and charge the LIL Lease to and in favour of NLH, and grant to NLH a security interest in the LIL Lease within the meaning of the *Personal Property Security Act* (Newfoundland and Labrador).

- (f) Sole and Exclusive Right, Remedy and Recourse -
 - (i) If NLH exercises its rights under **Section 2.6(a)**, with respect to an Opco O&M Activity Default, or the Partnership exercises its rights under **Section 2.6(b)**, such exercise shall be the sole and exclusive right, remedy and recourse of NLH or the Partnership, as applicable, for the default by Opco to carry out the O&M Activities in accordance with the LIL Lease or the TFA.

 - (ii) If NLH exercises its rights under **Section 2.6(a)** with respect to an Opco Transmission Capability Default, it shall be the sole and exclusive right, remedy and recourse of NLH for such Opco Transmission Capability Default.

 - (iii) If the Partnership exercises its rights under **Section 2.6(c)** and requires Opco to assign to NLH the LIL Lease, and NLH to assume and perform the obligations of Opco set forth in the LIL Lease, it shall be the sole and exclusive right, remedy and recourse of the Partnership for Opco's default of its obligation to pay Rent in accordance with the LIL Lease.

ARTICLE 3
TAXES

3.1 **Supplies and Payments Exclusive of Taxes**

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

- (b) Governmental Charges - Subject to **Section 3.1(c)**,
 - (i) if Opco is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder, Opco shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse Opco for such Taxes to the extent not so offset;

 - (ii) if Opco is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, Opco shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership

under this Agreement, and the Partnership shall promptly reimburse Opco for such Taxes to the extent not so offset;

- (iii) if NLH is required by Applicable Law to remit or pay Taxes which are Opco's responsibility hereunder, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to Opco under this Agreement, and Opco shall promptly reimburse NLH for such Taxes to the extent not so offset;
 - (iv) if NLH is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership under this Agreement, and the Partnership shall promptly reimburse NLH for such Taxes to the extent not so offset;
 - (v) if the Partnership is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse the Partnership for such Taxes to the extent not so offset;
 - (vi) if the Partnership is required by Applicable Law to remit or pay Taxes which are Opco's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to Opco under this Agreement, and Opco shall promptly reimburse the Partnership for such Taxes to the extent not so offset; and
 - (vii) 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 3.1(a)** and **3.1(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 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;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to another 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 from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 3.3**; and
 - (iv) if one Party incurs an expense as agent for another 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 such other Party to claim, and shall cooperate with such other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 3.1(b)** and **3.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) NLH is solely responsible for the payment of income taxes and HST payable by NLH;
 - (ii) Opco is solely responsible for the payment of income taxes and HST payable by Opco; and
 - (iii) the Partnership is solely responsible for the payment of income taxes and HST payable by the Partnership.

3.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 3.2(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.

3.3 Invoicing Tax Requirement

All invoices, as applicable, 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 or payments 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.

3.4 Payment and Offset

- (a) Subject to **Section 3.4(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, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

3.5 HST Registration Status and Residency

- (a) Opco represents and warrants that it is registered for purposes of the HST and that its registration number is 8394 61779 RT0001, and undertakes to advise NLH and the Partnership of any change in its HST registration status or number.
- (b) NLH represents and warrants that it is registered for purposes of the HST and that its registration number is 121394928RT0001, and undertakes to advise Opco and the Partnership of any change in its HST registration status or number.
- (c) The Partnership represents and warrants that it is registered for purposes of the HST and that its registration number is 8063 711 00RT0 001, and undertakes to advise Opco and NLH of any change in its HST registration status or number.
- (d) Opco represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise NLH and the Partnership of any change in its residency status.
- (e) NLH represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Opco and the Partnership of any change in its residency status.
- (f) The Partnership represents and warrants that it is a Canadian partnership for the purposes of the Income Tax Act, and undertakes to advise Opco and NLH of any change in its status as a Canadian partnership.

3.6 **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 a Party is not 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).

3.7 **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 Parties, in writing, the following additional information for the purposes of assisting the other Parties with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply or payment 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 or recipient of such payment;
- (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 another Party advises the Party, in writing, is relevant to a determination by such 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 Parties, in a timely manner, of any material changes to the matters described in **Sections 3.7(a)** through **3.7(c)**.

3.8 **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 another Party to an Authorized Authority without the prior written consent of such other Party.

3.9 **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 Laws, 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 another 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 another Party, a Party shall deliver to such other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of such other Party.

3.10 **Tax Indemnity**

Each Party (in this **Section 3.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Parties from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 3** 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 3.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Parties harmless from and against:

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

3.11 **Additional Tax Indemnity**

If one Party (in this **Section 3.11** 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 Parties, and to indemnify and save harmless the other Parties 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 another Party to the First Party, provided that:

- (a) any such amount payable by such other Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which such 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 such other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on such other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

3.12 **Assignment**

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been authorized in accordance with this Agreement, 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 Parties 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 Parties of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Section 3.12** and **Article 5**.

ARTICLE 4
TERMINATION

4.1 **Termination**

This Agreement shall be in full force and effect from the Effective Date and shall terminate on:

- (a) the later of (i) the date which is two years after the date of termination of the LIL Lease, and (ii) the date which is two years after the date of termination of the TFA; and
- (b) the date specified in a written agreement of the Parties to terminate.

**ARTICLE 5
ASSIGNMENT**

5.1 Assignment Rights

Except as part of an assignment of the LIL Assets Agreement, the LIL Lease or the TFA, as applicable, in accordance with the provisions of such agreement, none of the Partnership, Opcor or NLH shall be entitled to assign all or any portion of its interest in this Agreement.

**ARTICLE 6
DISPUTE RESOLUTION**

6.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 2** (the "**Dispute Resolution Procedure**").
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 6**, without prejudice to their rights pursuant to this Agreement.
- (c) Notice to Canada - The Parties agree that in the event of a Dispute both the Collateral Trustee and Canada 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 (the "**Participation Clause**"). The Parties agree that both the Collateral Trustee and Canada can rely on the Participation Clause as if they were parties to the Agreement.

**ARTICLE 7
MISCELLANEOUS PROVISIONS**

7.1 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:

- (a) to Canada:

Natural Resources Canada
Electricity Resources Branch
580 Booth Street, 17th Floor, Room: C7-2
Ottawa, Ontario K1A 0E4
Canada
Attention: Jonathan Will, Director General

Facsimile: 613-947-4205
E-mail: Jonathan.Will@NRCan-RNCan.gc.ca

(b) with a copy to :

Natural Resources Canada
Renewable and Electrical Energy Division
580 Booth Street, 17th Floor, Room: B7-3
Ottawa, Ontario K1A 0E4
Canada
Attention: Anoop Kapoor, Director, Renewable and Electrical Division
Facsimile: 613-947-4205
E-mail: Anoop.Kapoor@NRCan-RNCan.gc.ca

(c) to Collateral Trustee:

The Toronto-Dominion Bank, as Collateral Agent
TD Bank Tower
66 Wellington St. W., 9th Floor
Toronto, Ontario, Canada. M5K 1A2
Telephone: 416 982-2196
Attention: Michael A. Freeman, Vice President Loan Syndications-Agency
Fax: 416 944-6976
Email: michael.freeman@tdsecurities.com

(d) to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL
A1B 0M5
Attention: Corporate Secretary
Fax: (709) 737-1782

(e) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(f) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL
A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

(g) to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.
500 Columbus Drive
P.O. Box 13000, Station A
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

(h) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted 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. Each Party may change its address or fax number hereunder from time to time by giving Notice of such change to each of the other Parties.

7.2 Counterparts

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

7.3 Announcements

No announcement with respect to this Agreement shall be made by a 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 each of the other Parties before making any such announcement and gives due consideration to the views of each of the other Parties with respect thereto. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

7.4 Further Assurances

Each Party 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.

7.5 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, each Party shall negotiate in good faith and execute 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.

7.6 Time of the Essence

Time shall be of the essence.

7.7 Amendments

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

7.8 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 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 such Party or otherwise reduce the obligations of the Party receiving such consent or approval.

7.9 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.

7.10 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties arising out of this Agreement. 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.

7.11 **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 (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) 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.

7.12 **Successors and Assigns**

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

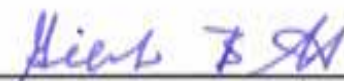
7.13 **Affiliates of Nalcor**

Notwithstanding any other provision of this Agreement, the NL Crown shall be deemed to not be an Affiliate of Nalcor, Opco, NLH, the Partnership, the GP or Nalcor LP.

[The remainder of this page is intentionally left blank.]

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

**LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION**

By: 
Name: _____
Title: Gilbert Bennett
Vice President

By: 
Name: _____
Title: Derrick Sturge
VP, Finance & CFO

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

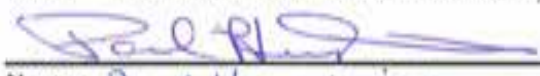
LABRADOR-ISLAND LINK OPERATING CORPORATION

By: 
Name: _____
Title: Derrick Sturge
VP, Finance & CFO

By: 
Name: Robert Hull
Title: GM (Commercial & Financing) & CRO
We have authority to bind the corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: 
Name: Robert Henderson
Title: VP, Newfoundland and Labrador Hydro

By: 
Name: Paul Humphries
Title: _____
We have authority to bind the corporation.

LIL REMEDIES AGREEMENT

SCHEDULE 1

OPCO SECURITY AGREEMENT

**SCHEDULE 1
OPCO SECURITY AGREEMENT**

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OPCO SECURITY AGREEMENT

THIS OPCO SECURITY AGREEMENT is made effective the ● day of ●, 2013 (the “**Effective Date**”).

BETWEEN:

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor (“**Opco**”)

- and -

[**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP**, a limited partnership formed pursuant to the laws of Newfoundland and Labrador, acting by its general partner **LABRADOR-ISLAND LINK GENERAL PARTNER CORPORATION** (the “**Partnership**”)]

[or]

[**NEWFOUNDLAND AND LABRADOR HYDRO**, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the Statutes of Newfoundland and Labrador, 2007, and a wholly-owned subsidiary of Nalcor (“**NLH**”)]

WHEREAS:

- A. [Opco and the Partnership are parties to the LIL Lease and the LIL Remedies Agreement;]
[Opco and NLH are parties to the TFA and the LIL Remedies Agreement;]
- B. Pursuant to the LIL Remedies Agreement, [Opco has agreed to transfer, assign, mortgage and charge the TFA to and in favour of the Partnership, and to grant the Partnership a security interest in the TFA;] [Opco has agreed to transfer, assign, mortgage and charge the LIL Lease to and in favour of NLH, and to grant NLH a security interest in the LIL Lease;]

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

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement, including the recitals, capitalized terms which are defined in the LIL Remedies Agreement and are not otherwise defined herein have the meanings ascribed thereto in the LIL Remedies Agreement when used in this Agreement, and the following terms shall have the meanings set forth below:

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

“**Collateral**” means the rights and interests of Opco in the [LIL Lease] [TFA];

“**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 6.1**;

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

“**LIL Lease**” means the agreement between the Partnership and Opco (and NLH for certain limited purposes) by which the LIL Assets and Rights are leased, assigned or licenced, as applicable, by the Partnership to Opco;

“**LIL Remedies Agreement**” means the agreement to which this Agreement is attached as a Schedule;

“**Opco Default**” has the meaning set forth in **Section 4.1**;

[“**NLH Rights**” has the meaning set forth in **Section 5.1(a)**;

[or]

[“**Partnership Rights**” has the meaning set forth in **Section 5.1(a)**;

“**Parties**” means Opco and **[the Partnership] [NLH]**, and “**Party**” means one of them;

“**PPSA**” means the *Personal Property Security Act* (Newfoundland and Labrador);

“**Secured Obligations**” means the obligations of Opco as set forth in **[Section 2.4(a)] [Section 2.6(a)]** of the LIL Remedies Agreement;

“**TFA**” means the agreement among NLH, Opco and the Partnership relating, among other things, to the recovery from NLH of costs of the LIL incurred by Opco and the Partnership;

“**Term**” has the meaning set forth in **Section 3.1**.

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) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Appendices) are in lawful money of Canada.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.

- (i) 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 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 6**, 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 SECURITY AGREEMENT AND COVENANTS OF OPCO

2.1 Security Agreement

- (a) Grant of Security Rights - As general and continuing collateral security for the payment and performance of the Secured Obligations (including the payment of any such Secured Obligations that would become due but for any automatic stay under the provisions of the *Bankruptcy and Insolvency Act* (Canada) or any analogous provisions of any other Applicable Law) Opco hereby transfers, assigns, mortgages and charges the Collateral to and in favour of **[the Partnership] [NLH]**, and grants to such Party, a continuing security interest in the Collateral.
- (b) Attachment; No Obligation to Advance - Opco confirms that value has been given by **[the Partnership] [NLH]**, that **[the Partnership] [NLH]** has rights in the Collateral (other than after-acquired property) existing at the date of this Agreement, as the case may be, and that Opco and **[the Partnership] [NLH]** have not agreed to postpone the time for attachment of the security interest created by this Agreement to any of the Collateral. The security interest in respect of the Collateral created by this Agreement will have effect and be deemed to be effective whether or not the Secured Obligations or any part thereof are owing or in existence before or after or upon the date of this Agreement.

- (c) Subordination - The Parties acknowledge and agree that the transfer, assignment, mortgage and charge of the Collateral, and the continuing security interest granted in the Collateral, is subject to and subordinate in all respects to the transfers, assignments, mortgages, charges and security interests created pursuant to the Financing Documents.

2.2 Covenants of Opco

Opco covenants and agrees with **[the Partnership] [NLH]** as follows:

- (a) Further Documentation - Opco will from time to time, at its expense, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as **[the Partnership] [NLH]** may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any notices, financing statements or financing change statements under any applicable legislation with respect to the transfer, assignment, mortgage, charge and security interest created by this Agreement). Opco acknowledges that this Agreement has been prepared based on the existing laws in NL and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation to preserve and comply with the intent of this Agreement. Accordingly, Opco agrees that **[the Partnership] [NLH]** will have the right to require that this Agreement be amended, supplemented or replaced, and that Opco will immediately on request by **[the Partnership] [NLH]** authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions as a result of any changes in such laws, or (iii) if Opco merges, amalgamates or consolidates with any other Person or enters into any corporate reorganization, in each case in order to confer on **[the Partnership] [NLH]** transfers, assignments, mortgages, charges and security interests similar to, and having the same effect as, the transfer, assignment, mortgage, charge and security interest granted by Opco under this Agreement.
- (b) Payment of Expenses; Indemnification - Upon the occurrence of an Opco Default, Opco will pay on demand, and will indemnify and save **[the Partnership] [NLH]** harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and his or her own client basis and any Taxes payable to any Authorized Authority with respect to any such liabilities, costs and expenses) (i) incurred by **[the Partnership] [NLH]** in the administration or enforcement of this Agreement, or (ii) incurred by **[the Partnership] [NLH]** in performing or observing any of the other covenants of Opco under this Agreement.

ARTICLE 3
TERM AND TERMINATION

3.1 **Term**

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and terminate in accordance with **Section 3.2**.

3.2 **Termination**

This Agreement shall terminate on the earlier of the date of:

- (a) termination of the LIL Remedies Agreement; and
- (b) termination of the [LIL Lease][TFA].

3.3 **Effect of Termination**

- (a) **Obligations on Termination** - When this Agreement terminates:
 - (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Section 6.1**; and
 - (ii) no Party shall have any obligation to the other Parties in relation to this Agreement or the termination thereof, except as set out in this **Section 3.3**.
- (b) **Survival** - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
 - (i) the final settlement of all accounts between them;
 - (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 8.3**.

**ARTICLE 4
DEFAULT AND REMEDIES**

4.1 Opco Event of Default

A default by Opco under this Agreement (an “**Opco Default**”) shall occur whenever Opco defaults under any of the Secured Obligations.

4.2 Remedies of [the Partnership] [NLH] upon Opco Default

Upon the occurrence of an Opco Default and at any time thereafter, **[the Partnership] [NLH]** shall be entitled to exercise all or any of its rights, remedies or recourse available to it under (a) the LIL Remedies Agreement, and (b) as a secured party under and as defined by the PPSA.

4.3 Appointment of [the Partnership] [NLH] as Attorney-in-Fact

Opco constitutes and appoints **[the Partnership] [NLH]** and any officer or agent of **[the Partnership] [NLH]**, with full power of substitution, as Opco’s true and lawful attorney-in-fact with full power and authority in the place of Opco and in the name of Opco or in its own name, from time to time in **[the Partnership’s] [NLH’s]** discretion after an Opco Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the transfer, assignment, mortgage, charge and security interest created by this Agreement is released. Nothing in this **Section 4.3** affects the right of **[the Partnership] [NLH]** as secured party, or any other Person on the [Partnership’s] [NLH’s] behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as the [Partnership] [NLH] or such other Person considers appropriate.

**ARTICLE 5
ASSIGNMENT AND CHANGE OF CONTROL**

5.1 [Partnership] [NLH] Assignment Rights

- (a) General - The Partnership shall be entitled to assign all of its rights and interests in this Agreement or any Claim (collectively, the “**Partnership Rights**”) to any Person which has become the assignee of the Partnership’s rights and interests in the LIL Lease pursuant to the assignment provisions of the LIL Lease.
- (b) Agreement to be Bound - No assignment may be made of the Partnership Rights by the Partnership unless such assignment includes all the Partnership Rights and the Partnership obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Partnership Rights.]

- (c) General - NLH shall not assign this Agreement, its interests or rights hereunder, any Claim or any agreement relating to the foregoing.]
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.1** will be null and void.

5.2 Opco Assignment Rights

- (a) General - Opco shall not assign this Agreement, its interests or rights hereunder, any Claim or any agreement relating to the foregoing.]
- (b) General - Opco shall be entitled to assign all of its rights and interests in this Agreement or any Claim (collectively, the “**Opco Rights**”) to any Person which has become the assignee of Opco’s rights and interests in the TFA pursuant to the assignment provisions of the TFA.
- (c) Agreement to be Bound - No assignment may be made of the Opco Rights by Opco unless such assignment includes all the Opco Rights and Opco obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Opco Rights.]
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 5.2** will be null and void.

**ARTICLE 6
DISPUTE RESOLUTION**

6.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 3 to the [LIL Lease] [TFA]** (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 6**, without prejudice to any Party’s rights pursuant to this Agreement.

**ARTICLE 7
REPRESENTATIONS AND WARRANTIES**

7.1 Opco Representations and Warranties

Opco represents and warrants to **[the Partnership] [NLH]**, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Opco and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its knowledge, threatened against it;
- (e) there are no legal proceedings pending or, to its knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;
- (g) it 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;
- (h) Except for such as are associated with the Financing Documents, Opco holds the Collateral free and clear of any mortgage, charge, hypothecation, lien or other adverse claim or encumbrance of any nature.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 **Notices**

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

(a) to Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL A1B 0M5
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

(c) [to the Partnership:]

Labrador–Island Link General Partner Corporation,
as General Partner of Labrador-Island Link Limited Partnership
500 Columbus Drive
P.O. Box 13000
St. John's, NL A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

(d) [with a copy to:]

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL A1B 0M5
Attention: Corporate Secretary
Fax: (709) 737-1782

(e) [to NLH:]

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

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

8.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein.

8.3 Counterparts

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

8.4 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.

8.5 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. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

8.6 **Relationship of the Parties**

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship among or between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement among or between the Parties 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 any other Party for any purpose nor to permit a Party to enter into agreements or incur any obligations for or on behalf of the other Party.

8.7 **Further Assurances**

Each Party 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.

8.8 **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, each Party 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.

8.9 **Time of the Essence**

Time shall be of the essence.

8.10 **Amendments**

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

8.11 **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 such Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

8.12 **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.

8.13 **Survival**

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties, arising out of this Agreement. All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, representations, warranties and releases, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

8.14 **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 (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) 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.

8.15 **Successors and Assigns**

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

[Remainder of this page intentionally left blank.]

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

LABRADOR-ISLAND LINK OPERATING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

**LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION**

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

OR

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

LIL REMEDIES AGREEMENT

APPENDIX A

TO

OPCO SECURITY AGREEMENT

ACKNOWLEDGEMENT OF SUBORDINATION

ACKNOWLEDGEMENT OF SUBORDINATION

The undersigned hereby acknowledges, declares and agrees that the securities interest granted to it in the Opco Security Agreement dated [●] (the “**Security Interest**”) and all of the rights, remedies and/or recourses of the undersigned in connection therewith are hereby and shall hereafter be completely subordinated to and rank after any and all Liens now or hereafter held by the Collateral Agent, the Security Trustee or any other GAA Finance Party (as each of those terms is defined in the Financing Documents, collectively, the “**Senior Liens**”), including without limitation, the Liens granted hereunder in favour of the Collateral Agent, for its own benefit and the benefit of the GAA Finance Parties, notwithstanding any ranking that might otherwise be established by Applicable Law resulting from the nature of the Liens created under the Security Interest or the Senior Liens or the date or time of execution, issue, delivery, registration, filing, notification, publication or perfection of any deed, document, application for registration, notice or financing statement, or otherwise howsoever. The undersigned covenants and agrees not to exercise any of its rights, remedies and/or recourses under the Security Interest without the prior written consent of the Collateral Agent. The undersigned agrees to take such actions and execute and deliver such documents and information as may be reasonably requested by the Collateral Agent from time to time in order to give effect to the subordination contemplated herein, including, without limitation, registration of an amendment to any Personal Property Security Act (Newfoundland and Labrador) registration made in connection with the Security Interest to note the subordination in favour of the Senior Lenders.

LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, **LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION**

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

OR

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

LIL REMEDIES AGREEMENT

SCHEDULE 2

DISPUTE RESOLUTION PROCEDURE

**SCHEDULE 2
DISPUTE RESOLUTION PROCEDURE**

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SCHEDULE 2
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:

“Agreement” means the agreement to which this Schedule is attached;

“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 Parties” 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 by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

“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 Agreement.

2.3 Interim Measures

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

2.4 Mediator or Arbitrator as Witness

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

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by any Party requesting a review under this **Section 3** by Notice to the other Parties (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 no 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 any 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 forth 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) a Party gives Notice to the other Parties 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 no 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) a Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Parties (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, any Party may elect, by giving notice thereof to the other Parties, 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 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 any other agreement to which they are all parties, 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 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

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

Section 6 **Expert Determination Procedure**

6.1 **Referral for Expert Determination**

A Party (the “**Referring Party**”) may by Notice to another 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 the Agreement, 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 forth 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 Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

LIL REMEDIES AGREEMENT

APPENDIX A

TO

DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

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.

(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).

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- (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 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 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

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.

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "**Agreement**") made as of November 29th, 2013 (the "**Effective Date**").

BETWEEN:

NALCOR ENERGY, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador)
(the "**Assignor**")

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated under the laws of the Province of Newfoundland and Labrador
(the "**Assignee**")

- and -

HER MAJESTY IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR, as represented by the Lieutenant-Governor in Council
(the "**Government**")

RECITALS:

- A. By water lease dated March 17, 2009 amended October 2, 2009 between Government and the Assignor, Government leased to the Assignor certain water rights in, to and in respect of the Lower Churchill River in Labrador in accordance with the terms set out therein (the "**Water Lease**");
- B. Pursuant to Section 32 of the Water Lease, the Assignor is permitted to assign the Water Lease provided the proposed assignee executes with Government an instrument whereby the assignee agrees to be bound by and perform all of the Assignor's obligations under the Water Lease; and
- C. The Assignor wishes to assign the Water Lease to the Assignee in accordance with the terms herein;

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment by Assignor

The Assignor hereby assigns, grants, transfers and sets over unto the Assignee, for the Assignee's sole use and benefit, the Water Lease together with all of the Assignor's right, title and interest in, to and under the Water Lease, together with any and all rights, income, benefits and advantages to be derived therefrom or in respect thereof arising from and after the Effective Date, subject to the right and option (the "**Option**"), exercisable at the Assignor's sole and absolute discretion, to have all the Gull Island Rights, as hereinafter defined, reassigned to it.

- 2 -

2. Gull Island Rights

The "Gull Island Rights" are defined as the water rights associated with that section of the Lower Churchill River above the Muskrat Falls development attributable to the Gull Island development being:

- (i) that part of the Churchill River below the intersection of the Churchill River with the meridian of 63° 40' west of Greenwich, downstream to the intersection of the Churchill River with the meridian of 61° 25' west of Greenwich, and all waters that naturally flow into, or by diversion flow into, the Churchill River between these two points, and
- (ii) that part of the Churchill River upstream of the point of intersection of the Churchill River with the meridian of 63° 40' west of Greenwich that lies below the 425 foot contour line or below elevation 425 feet, as referenced in Appendix A of the *Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*,

but excludes the area described in Appendix A to the *Churchill Falls (Labrador) Corporation (Lease) Act, 1961* and all waters while they are in that area.

The Gull Island Rights shall include:

- (a) the exclusive right to harness and make use of the Lower Churchill River above the Muskrat Falls development
- (b) all water rights above elevation 39.0 metres referenced from the Canadian Geodetic Vertical Datum 1928 (CGVD28) in, to, and in respect of the Lower Churchill River, and
- (c) the exclusive right to construct and utilize all dams, tunnels, canals, diversions, power houses and any and all works on the Lower Churchill River above the Muskrat Falls development necessary for the development of hydro electric power,
- (d) the exclusive right to store and regulate so much of the Lower Churchill River as may be economic and/or beneficial for the purposes of the development of the Lower Churchill River above Muskrat Falls,

but shall not include any right to divert the Lower Churchill River outside the Churchill River basin.

3. Assumption by Assignee

The Assignee hereby accepts this assignment and agrees to assume, and shall observe and perform, all of the Assignor's obligations and liabilities under the Water Lease which are to be observed or performed thereunder as and from the Effective Date and further agrees to reassign the Gull Island Rights immediately upon receipt of written notice from the Assignor pursuant to Section 1 of this Agreement and in accordance with the procedures set out in section 4 of this Agreement.

- 3 -

4. Procedure for Exercising the Option

- (a) The Assignor shall give to the Assignee a notice in writing (the "Notice") of its intention to exercise the Option.
- (b) A copy of the Notice shall be delivered to the Government contemporaneously with the provision of the Notice to the Assignee.
- (c) Within thirty (30) days from the delivery of the Notice, the Assignee shall reassign to the Assignor the Gull Island Rights, in a form acceptable to the Government and the Assignor which form shall include a representation by the Assignor that it shall not exercise the Gull Island Rights in a manner that will adversely affect a provision of a contract for the supply of power entered into prior to the assignment, or any contract renewal thereof, (including, without limitation the Power Purchase Agreement between Newfoundland and Labrador Hydro and the Assignee dated November 29th, 2013) and the Assignor shall accept the reassignment of the Gull Island Rights and agree to be bound by the terms and conditions of the Water Lease as they relate to the Gull Island Rights.

5. Government's Right to Terminate

The parties acknowledge and agree that Government may terminate the water rights contemplated under the Water Lease attributable to the Gull Island Rights at its sole and absolute discretion without payment for losses, damages or compensation of any kind. For greater certainty, on termination by the Government of the Gull Island Rights, the Option shall be null and void and of no force or effect.

6. Government's Consent to Security Interest

With the exception of the Gull Island Rights, Government hereby consents pursuant to Section 19 of the Water Lease to Muskrat granting a security interest in the Water Lease to the collateral agent/security trustee for the benefit of the Government of Canada and others to secure the financing guaranteed by the Government of Canada to develop the Muskrat Falls generation facility and associated transmission assets. The consent of the Government pursuant to this section shall not be interpreted to include consent for the collateral agent/security trustee to assign, transfer or grant a security interest in those rights to any third party.

7. Successors and Assigns

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

8. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada applicable therein.

- 4 -

9. Execution by Counterparts

This Agreement may be executed in counterparts and delivered by facsimile or portable document format (PDF) and the counterparts delivered by facsimile or PDF together shall constitute one and the same instrument.

10. Further Assurances

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use its best efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement provided that any such further assurances by the Assignor shall be at no material expense to the Assignor.

[Signature page follows]

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the Effective Date.

NALCOR ENERGY

By: 

Name:

Title:

By: 

Name:

Title:

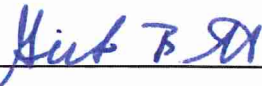
We have authority to bind the corporation.

MUSKRAT FALLS CORPORATION

By: 

Name:

Title:

By: 

Name:

Title:

We have authority to bind the corporation.

**HER MAJESTY IN RIGHT OF THE PROVINCE OF
NEWFOUNDLAND AND LABRADOR**, as represented
by the Lieutenant-Governor in Council

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the Effective Date.

NALCOR ENERGY

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

MUSKRAT FALLS CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

**HER MAJESTY IN RIGHT OF THE PROVINCE OF
NEWFOUNDLAND AND LABRADOR**, as represented
by the Lieutenant-Governor in Council

By: _____
Name: *Hon. Derrick Dalley*
Title: *Minister of Natural Resources*

By: _____
Name:
Title:

- 1 -

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “**Agreement**”) made as of November 29th, 2013 (the “**Effective Date**”).

B E T W E E N:

NALCOR ENERGY, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador)
(the “**Assignor**”)

- and -

MUSKRAT FALLS CORPORATION, a corporation incorporated under the laws of the Province of Newfoundland and Labrador
(the “**Assignee**”)

RECITALS:

- A.** By Order dated March 9, 2010, the Newfoundland and Labrador Board of Commissioners of Public Utilities established the terms of a water management agreement (the “**WMA**”) between the Assignor and Churchill Falls (Labrador) Corporation Limited (“**CFLCo**”);
- B.** Pursuant to Section 14.3 of the WMA, the Assignor is permitted to assign the WMA to a Subsidiary or Affiliate (as those terms are defined in the WMA) in the event of a transfer to that Subsidiary or Affiliate of all or substantially all of the assets of the Assignor devoted to the production, transmission, distribution and sale of Power and Energy on the Churchill River and upon prior written notice by the Assignor to CFLCo;
- C.** The Assignee is a Subsidiary of the Assignor within the meaning set out in the WMA;
- D.** The Assignor now wishes to assign all of the Assignor’s right, title and interest in, to and under the WMA to the Assignee in accordance with the terms herein and pursuant to the Nalcor Asset Transfer Agreement dated 29th, 2013 (the “**Transfer Agreement**”);

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including that set out in the Transfer Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment by Assignor

The Assignor hereby assigns, grants, transfers and sets over unto the Assignee, for the Assignee’s sole use and benefit, the WMA together with all of the Assignor’s right, title and interest in, to and under the WMA, together with any and all rights, income, benefits and advantages to be derived therefrom or in respect thereof arising from and after the Effective Date.

2. Assumption by Assignee

The Assignee hereby accepts this assignment and agrees to assume, and shall observe and perform, all of the Assignor’s obligations and liabilities under the WMA which are to be observed or performed thereunder as and from the Effective Date.

- 2 -

3. Successors and Assigns

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

4. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada applicable therein.

5. Execution by Counterparts

This Agreement may be executed in counterparts and delivered by facsimile or portable document format (PDF) and the counterparts delivered by facsimile or PDF together shall constitute one and the same instrument.

6. Further Assurances

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use its best efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement provided that any such further assurances by the Assignor shall be at no material expense to the Assignor.

[Signature page follows]

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the Effective Date.

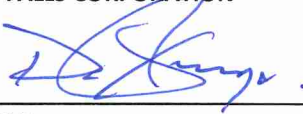
NALCOR ENERGY

By: 
Name: _____
Title:

By: 
Name: _____
Title:

We have authority to bind the corporation.

MUSKRAT FALLS CORPORATION

By: 
Name: _____
Title:

By: 
Name: _____
Title:

We have authority to bind the corporation.

NALCOR ENERGY

and

EMERA INC.

SANCTION AGREEMENT

December 17, 2012

THIS SANCTION AGREEMENT is made effective the 17th day of December, 2012 (the "**Effective Date**")

BETWEEN:

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

- and -

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

(individually referred to as a "**Party**" and collectively referred to as the "**Parties**")

WHEREAS:

- A. Nalcor and Emera entered into a Term Sheet dated November 18, 2010 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 the Formal Agreements contemplated by the Term Sheet on July 31, 2012;
- C. The Parties, Canada, the NS Crown, and the NL Crown entered into the Federal Loan Guarantee Agreement; and
- D. Nalcor and Emera now wish to Sanction the Maritime Link, and Nalcor wishes to sanction the Labrador-Island Link, the Labrador Transmission Assets and the Muskrat Falls Plant, and the Parties wish to set out certain critical terms and conditions related to each such sanction;

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

1. Definitions

For the purpose of this Sanction Agreement:

Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to them in the ML-JDA.

“Agreed Provisions” has the meaning set forth in **Section 4(d)(i)**;

“Applied For Capital Costs” means 20% of the sum of the Estimated Capital Costs, the LIL Estimated Capital Costs, the LTA Estimated Capital Costs, and the MFP Estimated Capital Costs;

“Basis Points” and **“BPS”** means a unit equal to one-hundredth (1/100th) of a percentage point and **“basis points”** and **“bps”** have a corresponding meaning;

“COD” means the Commercial Operation Date;

“Canada” means Her Majesty the Queen in Right of Canada;

“Class B Shares” has the meaning set forth in **Section 4(c)(i)**;

“DRP” means the Dispute Resolution Procedure referred to in **Section 11**;

“Decision Gate 3 Costs” or **“DG3 Costs”** means the Estimated Capital Costs of the Maritime Link at the time of Emera Decision Gate three;

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

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

“Emera Rights” has the meaning set forth in **Section 10**;

“Estimated Overall Project Costs” means the sum of the DG3 Costs, the LIL Estimated Capital Costs, the LTA Estimated Capital Costs, and the MFP Estimated Capital Costs;

“Federal Loan Guarantee Agreement” means the “Agreement Providing Key Terms and Conditions for the Federal Loan Guarantee By Her Majesty the Queen in right of Canada for the Debt Financing of the Lower Churchill River Projects”;

“Final UARB Determination” occurs when:

- (a) DG3 Costs are finally established by the Parties; and
- (b) a UARB Decision, including any decision resulting from any subsequent Emera application, requests for reconsideration and any applications made pursuant to **Section 4(f)**, has been received by Emera;

“Financial Close” means the earliest to occur of the “Financial Close” (as defined in the Federal Loan Guarantee Agreement) relating to the Muskrat Falls Plant, the Labrador Transmission Assets, the Labrador-Island Link, and the Maritime Link;

“Financial Condition” means a condition or conditions relating solely to the Rate of ROE imposed by the UARB Decision, which results in the UARB Decision ROE being less than the NS Regulatory Application ROE by 75 basis points or less;

“Financial Conditions Resolution Date” means the date on which the resolution of the allocation of any shortfall caused by a Financial Condition occurs, which is:

- (a) if **Section 4(a)** applies, 30 days following the Final UARB Determination;
- (b) if **Section 4(b)** applies, 30 days following the Notice provided by Emera pursuant to that Section; or
- (c) such other date as the Parties may agree;

“Initial Term” has the meaning set out in the ECA;

“Inter-Provincial Agreement” means the Inter-Provincial Agreement between Nalcor, Emera, the NS Crown, and the NL Crown dated July 31, 2012;

“Investment Agreement” has the meaning set forth in **Section 4(c)**;

“Investment Principles” has the meaning set forth in **Section 4(c)**;

“Issuer” has the meaning set forth in **Section 4(c)(i)**;

“ML Agreements” means the ML-JDA, Nova Scotia Transmission Utilization Agreement, the Energy and Capacity Agreement, the Joint Operations Agreement, the Maritime Link (Emera) Transmission Service Agreement, the Maritime Link (Nalcor) Transmission Service Agreement and the Interconnection Operators Agreement;

“ML-JDA” means the Maritime Link – Joint Development Agreement between Nalcor and Emera executed on July 31, 2012, including all Schedules, as it may be modified, amended, supplemented or restated by this Sanction Agreement or by further written agreement between Nalcor and Emera;

“NS Regulatory Application ROE” has the meaning set forth in **Section 4(c)(iii)**;

“NSPML” means NSP Maritime Link Inc.;

“Nalcor Investment” has the meaning set forth in **Section 4(c)(v)**;

“Nalcor Rights” has the meaning set forth in **Section 9**;

“New Maritime Link” has the meaning set forth in **Section 5(b)(i)**;

“Other Condition” means any term, condition, stipulation, or requirement of the UARB Decision or related order, other than a Financial Condition;

“P50 to P90 Estimated Capital Costs” means a range of P50 to P90 estimated Capital Costs of the Maritime Link as determined by Emera;

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

“Predicted MFP Production” means the predicted average Energy production of the MFP adjusted pursuant to Schedule 2 of the Energy and Capacity Agreement;

“ROE Applied Formula” has the meaning set forth in **Section 3(b)(ii)**;

“ROE Applied Risk Premium” has the meaning set forth in **Section 3(b)(ii)**;

“Rate of Return on Equity” or **“Rate of ROE”** means the percentage rate, determined by formula as applicable, applied to the actual or UARB-deemed equity amount as the context requires to establish the dollar amount of ROE and refers to the specific level, including any adjustment formula, that is used for rate making purposes;

“Return on Equity” or **“ROE”** means the earnings on equity invested, or UARB-deemed to be invested, as the context requires;

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

“True Up Adjustment” means the adjustment referred to in **Section 3(e)**; and

“UARB Decision ROE” has the meaning set forth in **Section 4(c)(iii)**.

2. Sanction of the Maritime Link

- (a) Nalcor and Emera agree to Sanction the Maritime Link simultaneously with the sanction of the Muskrat Falls Plant, the Labrador-Island Link, and the Labrador Transmission Assets.
- (b) Upon Sanction, each of Nalcor and Emera is committed to cause the Maritime Link to be completed and Commissioned, as contemplated by and in accordance with the terms and subject to the conditions of this Sanction Agreement and the Formal Agreements as amended hereby.
- (c) The Parties acknowledge that notwithstanding their intent to now provide early Sanction of the Maritime Link, it is appropriate for various specific provisions of the Formal Agreements to continue to be triggered at the appropriate time following the UARB Decision. Accordingly, the Parties agree that the provisions of the Formal Agreements that trigger obligations by Nalcor or Emera (including any Affiliates of Nalcor or Emera), or provide that

an event is stated to occur, be defined or be calculated at or prior to Sanction of the Maritime Link by either Party, are hereby amended such that any such obligations would now be triggered, or such event would occur, be defined or be calculated at or prior to the Financial Conditions Resolution Date, other than as follows:

- (i) the Inter-Provincial Agreement will not be amended and will continue to be effective as of the date of Sanction made pursuant to this Sanction Agreement;
- (ii) the definition of "Government Action" in the ECA, the Maritime Link (Nalcor) Transmission Service Agreement, and the Nova Scotia Transmission Utilization Agreement will not be amended and the term "Sanction" in that definition will mean Sanction made pursuant to this Sanction Agreement; and
- (iii) Section 5.15(a) of the Newfoundland and Labrador Development Agreement will be amended such that Nalcor will maintain its option to acquire all but not less than all of Emera NL's Partnership Interest (as such is defined in the Newfoundland and Labrador Development Agreement), but only until such time as Emera satisfies the conditions precedent in Section 3.5(A)(ii) and (viii) of the Federal Loan Guarantee Agreement, after which Section 5.15(a) of the Newfoundland and Labrador Development Agreement shall be void. So long as Emera is carrying out its obligations in **Section 7(b)**, Nalcor agrees not to exercise its option in Section 5.15(a) of the Newfoundland and Labrador Development Agreement.
- (d) Nalcor and Emera hereby covenant to ensure that any of their Affiliates who are signatories to the Formal Agreements will act in accordance with this Sanction Agreement, and in particular, without limiting the generality of the foregoing, in amending the Formal Agreements pursuant to **Section 2(c)** and **Section 6**.

3. The NS Regulatory Application, DG3 Costs, and Related Matters

- (a) UARB Filing – Nalcor and Emera will cooperate to ensure the timely filing of the NS Regulatory Application for approval of the Maritime Link in accordance with Section 5.2(a) to Section 5.2(d) of the ML-JDA and after completion of Emera's due diligence as provided for in **Section 3(c)**.
- (b) Contents of the NS Regulatory Application – Emera:
 - (i) will prepare the NS Regulatory Application, supporting documents, and all related analysis of alternatives on a basis consistent with accepted regulatory practice and precedent in Nova Scotia, which for greater certainty does not include an integrated resource plan, and in accordance with the *Maritime Link Act* and the *Maritime Link Cost*

Recovery Process Regulations. The NS Regulatory Application will include a request for a capital structure in accordance with the Federal Loan Guarantee Agreement, evidence with respect to the P50 to P90 Estimated Capital Costs, and a request for approval of capital costs that are equal to the Applied For Capital Costs; and

- (ii) will cause NSPML to apply to the UARB in the NS Regulatory Application for depreciation of rate base assets on a straight line basis and a formula based Rate of ROE to be effective until 2017. The NS Regulatory Application will request that in 2013, the Rate of ROE is comprised of a 490 basis point risk premium and a 30 year A-rated long-term utility bond yield of 420 basis points. The formula will effect a change in the Rate of ROE based upon 75% of the year over year forecasted change in 30 year A-rated long-term utility bond yields (the **“ROE Applied Formula”**). The risk premium of 490 basis points requested in the NS Regulatory Application will remain constant (the **“ROE Applied Risk Premium”**). The calculation of the change required under the ROE Applied Formula will be made prior to the beginning of each year and be applied prospectively using the forecasted change in such 30 year A-rated long-term utility bond yields for such year.
- (c) Due Diligence – Notwithstanding Section 5.5 of the ML-JDA, Nalcor may continue to complete its due diligence, in its sole and absolute discretion, with respect to the Maritime Link, and Emera may continue to complete its due diligence, in its sole and absolute discretion, with respect to the MFP, the LIL, the LTA and the NLH AC Upgrades.
- (d) DG3 Costs – The DG3 Costs will be established on a basis consistent with the establishment of the MFP Estimated Capital Costs, the LIL Estimated Capital Costs, and the LTA Estimated Capital Costs, and such determination will occur no later than October 1, 2013.
- (e) Section 2.2(b) of the ML-JDA – If Section 2.2(b) of the ML-JDA applies, Nalcor and Emera agree to compensate the relevant Party pursuant to that Section (the **“True Up Adjustment”**). The True Up Adjustment shall be a contribution of cash or an Energy equivalent adjustment, the choice of which shall be at the sole option of the Party that is obligated to make the contribution. The contribution shall be determined by 60 days after the Financial Conditions Resolution Date, or such other date as agreed by Nalcor and Emera. The True Up Adjustment shall be calculated as follows:
 - (i) if the DG3 Costs are less than 20% of the Estimated Overall Project Costs, Emera shall make a contribution to Nalcor, or
 - (ii) if the DG3 Costs are greater than 20% of the Estimated Overall Project Costs, Nalcor shall make a contribution to Emera,

- such that, after the adjustment, Emera's percentage share of the Estimated Overall Project Costs will be equal to its percentage share of the Predicted MFP Production.
- (f) Energy Adjustment and Payment – If part or all of the contribution made under **Section 3(e)** is to be made by way of Energy, a pro-rated adjustment will be made to the Nova Scotia Block over the Initial Term such that the amount of Energy to be provided to Emera by Nalcor shall be adjusted so that Emera's share of the Predicted MFP Production is equal to the percentage obtained by comparing DG3 Costs, after adjustments for any cash contribution, to the Estimated Overall Project Costs. Nalcor and Emera agree that any cash contribution shall be made within 60 days of the determination in **Section 3(e)**, and that any applicable adjustment to the Nova Scotia Block shall likewise be documented by a formal agreement between Emera and Nalcor within such 60 day period.
- (g) Intention – For greater certainty:
- (i) the True Up Adjustment referred to in **Sections 3(e)** and **3(f)** shall be independent of any cost obligations imposed upon Nalcor under **Section 4(b) and (c)**, or for Unapproved Overruns, if any;
 - (ii) no further adjustments or compensation shall be made by either Nalcor or Emera under Section 2.2(b) of the ML-JDA; and
 - (iii) nothing in this Section derogates from any pre-existing rights of Nalcor or Emera under the ML-JDA with respect to the Estimated Capital Costs of the Maritime Link, the LIL Estimated Capital Costs, the LTA Estimated Capital Costs, and the MFP Estimated Capital Costs. For greater certainty, Nalcor and Emera agree that the MFP Estimated Capital Costs, the LIL Estimated Capital Costs, the LTA Estimated Capital Costs, and the DG3 Costs will be established by Nalcor, or Nalcor and Emera, as provided for in the ML-JDA.
- (h) Expedited Dispute Resolution - If Nalcor and Emera cannot agree on the establishment of the DG3 Costs, or on whether the Estimated Overall Project Costs have been consistently prepared, by October 1, 2013, any such Dispute shall be referred to the CEOs of Nalcor and Emera on five (5) Business Days' Notice to reach consensus. If the CEOs are unable to reach consensus within ten (10) Business Days of the matter being referred to them pursuant to this **Section 3(h)**, the matter will be referred to an Independent Expert as a Specified Dispute pursuant to Section 6.1 of the DRP. To the extent possible the Parties shall agree on as many issues as possible and limit any Specified Dispute to only those matters that cannot be agreed.
- (i) DRP Amendment - For purposes of a Specified Dispute under **Section 3(h)**, the DRP is hereby amended to allow as follows:

- (i) Section 6.3 of the DRP will be amended to provide for the selection and engagement of an Independent Expert by no later than ten (10) Business Days after the termination of discussions by the CEOs;
 - (ii) Notwithstanding any other provisions in the DRP, Nalcor and Emera will provide their written submissions to the Independent Expert within five (5) Business Days following the appointment of the Independent Expert and Nalcor and Emera shall provide written comments, if any, on the other Party's submission within 15 Business Days of provision of the written submissions to the Independent Expert;
 - (iii) With respect to submissions under **Section 3(i)(ii)**, a Party may only provide reports, estimates or other information:
 - (A) which had been previously disclosed to the other Party as part of the receiving Party's due diligence of the Defined Asset, or
 - (B) which had not been disclosed under **Section 3(i)(iii)(A)**, but which had been disclosed to the CEOs and the Parties as part of the referral of the Dispute to the CEOs;
 - (iv) Nothing in this Section shall preclude a Party from providing the Independent Expert with any reports, estimates or other information requested by the Independent Expert provided such reports, estimates and other information is also provided contemporaneously to the other Party;
 - (v) With respect to disclosures referred to in **Section 3(i)(iii)(B)** and **Section 3(i)(iv)**, the Independent Expert shall, at the request of the Party receiving the Information, extend the time periods referred to in **Section 3(i)(ii)**, taking into account:
 - (A) the desire of the Parties for an expeditious resolution of the Dispute; and
 - (B) the principle that the receiving Party must have sufficient time to adequately review, assess and respond to the Information.
- The Parties may each make a written submission to the Independent Expert on the appropriate time extension, but the decision of the Independent Expert shall be final;
- (vi) Section 6.12 of the DRP is amended such that the Independent Expert shall deliver a written decision within 15 Business Days after receipt of response submissions provided for in **Section 3(i)(ii)**; and
 - (vii) The decision of the Independent Expert shall be immediately binding on the Parties, and Emera will proceed to submit any required application pursuant to **Section 4(f)** within 20 Business Days after the receipt of the Independent Expert's decision.

4. **Outcome of the NS Regulatory Application**

(a) **No Conditions** - If the NS Regulatory Application is:

(i) approved as filed and:

(A) there are no Other Conditions as determined by Emera within 30 days of the Final UARB Determination, or, if there are any Other Conditions, they have been waived by Emera (and, to the extent that Emera cannot, as a result of a Final UARB Determination, comply with any of its contractual commitments to Nalcor under one or more of the ML Agreements, waived by Nalcor); and

(B) the Rate of ROE requested in the NS Regulatory Application has been approved or confirmed in the Final UARB Determination, as confirmed by Emera within 30 days after the Final UARB Determination; or

(ii) approved on the basis of a settlement agreement as filed with, and approved by, the UARB and agreed to by Emera and customer representatives together with any related agreements with Nalcor to facilitate such settlement,

Emera shall proceed to construct and Commission the Maritime Link in accordance with the UARB Decision and the ML-JDA.

(b) **Financial Condition** - If the NS Regulatory Application is approved with a Financial Condition, and there are no Other Conditions, both determined by Emera within 30 days following the Final UARB Determination, or, if there are any Other Conditions, they have been waived by Emera (and, to the extent that Emera cannot, as a result of a Final UARB Determination, comply with any of its contractual commitments to Nalcor under one or more of the ML Agreements, waived by Nalcor). Emera shall proceed to construct and Commission the Maritime Link in accordance with the UARB Decision and the ML-JDA. The Parties agree that at Emera's sole discretion, and within 15 days of the Final UARB Determination, Emera may, by Notice to Nalcor, elect to be responsible for 100% of any shortfall caused by a Financial Condition. If Emera does not so elect, then by Notice to Nalcor, Nalcor shall be required to invest so as to be responsible for approximately one-third (1/3) of the shortfall in accordance with the specific provisions of **Section 4(c)**;

(c) **Nalcor Equity Investment** – If Nalcor is required to make the Nalcor Investment, Nalcor and Emera will enter into an agreement (the "**Investment Agreement**") based on the following methodology and principles (the "**Investment Principles**"):

(i) the Nalcor Investment shall take the form of subscription payments for Class B Preferred Shares ("**Class B Shares**") in the capital of Emera Newfoundland and Labrador Holdings Inc. or such other entity selected by Emera which is a direct or

indirect holding company of NSPML (the issuer being referred to herein as the “Issuer”);

- (ii) The Class B Shares shall be non-voting preferred shares, redeemable (in whole or in part, at the option of the Issuer for a redemption price per share equal to the paid up capital (less the cumulative amount of returned capital) per share plus any cumulative unpaid dividends per share), non-transferable and without pre-emptive rights. The liability of the Class B shareholders, as shareholders, shall be limited to the amount of capital invested and committed to be invested (i.e. paid up capital plus unpaid capital not yet paid for the Class B Shares). The Class B Shares will have a priority dividend right over the common shares at the applicable rate provided in **Section 4(c)(v)**, adjusted as provided in this **Section 4(c)(ii)**, and Emera shall guarantee timely payment of the Class B Shares dividends. The paid up capital for the Class B Shares will be returned annually to the Class B shareholders on the same basis that depreciation of rate base assets is treated in the UARB Decision. The dividends on the Class B shares are cumulative, and the dividend rate on the Class B Shares shall annually increase or decrease by the same number of basis points that the approved annual Rate of ROE for NSPML, or the applicable entity referred to in **Section 4(c)(i)**, increases or decreases for 2018 and for each year thereafter.
- (iii) As at the Financial Conditions Resolution Date, the Rate of ROE as established by the UARB Decision (the “**UARB Decision ROE**”) will be compared to the Rate of ROE as requested in the NS Regulatory Application (the “**NS Regulatory Application ROE**”); each measured as the average annual Rate of ROE over the years 2013 to 2017. Each such rate will be calculated on a forecast basis as at the Financial Conditions Resolution Date in order to forecast the Rate of ROE for each year to 2017. A forecast of the Rate of ROE for each of the years 2013 through 2017 shall be made using the forecasted equivalent of any formula factors. If the NS Regulatory Application ROE less the UARB Decision ROE is in excess of 75 basis points, or the UARB Decision ROE does not include: (a) a rate certain Rate of ROE for all years of 2013 through and including 2017; (b) a formula or method for the calculation of Rate of ROE for all years of 2013 through and including 2017 (based on forecasts of any formula factors if applicable); or (c) a combination of such rate(s) certain and formula(e) referred to in (a) and (b) which allows for the calculation of Rate of ROE for all years of 2013 through and including 2017; then the UARB Decision ROE shall be deemed to be an Other Condition.
- (iv) At COD, the actual Rate of ROE arising from applying the UARB Decision ROE will be compared to the Rate of ROE which would have arisen from applying the NS Regulatory Application ROE; each calculated as the average annual Rate of ROE over the years 2013 to 2017. The Rate of ROE arising from applying the UARB Decision

ROE will be the actual Rate of ROE for each year from 2013 to 2017, calculated using the actual formula factors, if applicable, as approved by the UARB. The NS Regulatory Application ROE for 2013 will be as provided for in **Section 3(b)(ii)**, and for 2014 to 2017 will be the ROE Applied Risk Premium plus the ROE Applied Formula calculated consistent with the manner in which the ROE was filed for in the NS Regulatory Application. At COD, the Rate of ROE which would have arisen from applying the NS Regulatory Application ROE less the actual Rate of ROE arising from applying the UARB Decision ROE shall be determined. Nalcor shall either make a one-time cash payment to Emera or make the Nalcor Investment pursuant to **Section 4(c)(v)**.

- (v) Nalcor shall make an investment (the “**Nalcor Investment**”) which will be determined at COD on the following basis:
- (1) If the actual Rate of ROE arising from applying the UARB Decision ROE is under 26 basis points from the Rate of ROE which would have arisen from applying the NS Regulatory Application ROE, Nalcor shall not make any investment.
 - (2) If the actual Rate of ROE arising from applying the UARB Decision ROE is within a range from and including 26 basis points to 50 basis points (inclusive) of the Rate of ROE which would have arisen from applying the NS Regulatory Application ROE, Nalcor will invest \$15 million for Class B Shares, which shares shall be entitled to a cumulative preferred dividend of 5.5% per annum, as adjusted pursuant to **Section 4(c)(ii)**. In lieu of this Investment, Nalcor may make, at its option, a one-time cash payment to Emera in the amount of \$6 million divided by $(1 - \text{the tax rate applicable to NSPML})$, or the applicable entity referred to in **Section 4(c)(i)**, as at COD).
 - (3) If the actual Rate of ROE arising from applying the UARB Decision ROE is within a range from in excess of 50 basis points to 75 basis points (inclusive) of the Rate of ROE which would have arisen from applying the NS Regulatory Application ROE, Nalcor will invest \$25 million for Class B Shares, which shares shall be entitled to a cumulative preferred dividend of 5.0% per annum, as adjusted pursuant to **Section 4(c)(ii)**. In lieu of this Investment, Nalcor may make, at its option, a one-time cash payment to Emera in the amount of \$11 million divided by $(1 - \text{the tax rate applicable to NSPML})$, or the applicable entity referred to in **Section 4(c)(i)**, as at COD).
- (vi) Provided all of the forgoing principles are first applied, the equity investment will be structured giving consideration for tax efficiency for the Parties.

- (d) Negotiation of Investment Agreement - The Parties shall, as applicable, within 45 days of the Financial Conditions Resolution Date, use commercially reasonable efforts to reach agreement on the Investment Agreement, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of dealing, which will effect and implement the Investment Principles, in accordance with the following procedure:
- (i) To the extent possible the Parties shall agree on as many of the provisions of the Investment Agreement as possible ("**Agreed Provisions**") and limit any Specified Dispute under this **Section 4(d)** to only those provisions that cannot be agreed;
 - (ii) If within 180 days after the commencement of negotiations referred to in this **Section 4(d)** the Parties fail to agree on all of the provisions of the Investment Agreement, any Party may refer the matter to an Independent Expert as a Specified Dispute pursuant to Section 6.1 of the DRP;
 - (iii) For the purposes of a Dispute under this **Section 4(d)**, the DRP is hereby amended as follows:
 - (A) Pursuant to Section 6.4 of the DRP, the Terms of Reference of the Independent Expert are to select the proposed Investment Agreement submitted by a Party under this **Section 4** which most closely effects the investment consistent with the Investment Principles. The Terms of Reference are not subject to further agreement between the Parties and the provisions of Section 6.4 of the DRP shall not apply to a Dispute under this provision;
 - (B) In the submissions under Section 6.9(a) of the DRP, each Party shall include its proposed form of Investment Agreement, which shall include the Agreed Provisions, and which in its view complies with the Investment Principles;
 - (C) Simultaneous with the submissions under Section 6.9(a) of the DRP, the Parties will jointly submit any Agreed Provisions;
 - (D) Within 15 days of the completion of the Independent Expert clarifications under Section 6.10 of the DRP, each Party shall simultaneously make a final submission to the Independent Expert on matters referred to in the other Parties' initial submissions or matters referred to in the Independent Expert clarification process;
 - (E) Under Section 6.12 of the DRP, the decision of the Independent Expert shall be its selection of the proposed Investment Agreement of the Party which most closely effects the investment consistent with the Investment

Principles and the Agreed Provisions. The Independent Expert must select one Party's proposed Investment Agreement in its entirety and shall not select part of one proposed Investment Agreement and parts of another. This decision shall be made within 40 Business Days of the submission of the Parties under this **Section 4(d)**;

(F) Upon the decision of the Independent Expert, the selected Investment Agreement shall immediately be binding on the Parties, and the Parties will execute and deliver the Investment Agreement to each other; and

(G) Each Party shall equally share the costs of the Independent Expert and shall bear its own costs relating to the expert determination.

(iv) The provisions of Article 6 of the DRP shall be amended hereby as is necessary to give effect to these provisions. If the Parties cannot agree on any required amendments, the Independent Expert shall make that determination in its absolute discretion.

(e) Cash not Energy - For greater certainty, Nalcor will only be obligated to provide a money payment and not Energy to compensate Emera for any costs for which Nalcor may be liable under this Sanction Agreement unless Nalcor elects otherwise in its sole discretion pursuant to **Section 3(e)**.

(f) Additional UARB filings - Emera shall have the sole discretion to make any applications to the UARB in addition to the NS Regulatory Application with respect to any matter affecting this Sanction Agreement or the Maritime Link. Notwithstanding the foregoing, the Parties agree that Emera shall apply for UARB approval of that portion, if any, of the DG3 Costs (after taking account of the True Up Adjustment) which are in excess of the Applied For Capital Costs approved as a result of the NS Regulatory Application.

(g) Unapproved Overruns - Subject to the rights of the Parties with respect to Other Conditions, Unapproved Overruns are the amount the Actual Capital Costs exceed the DG3 Costs to the extent that such costs are not approved for recovery by the UARB.

5. Continuation of Negotiations Regarding Maritime Link Development

(a) Negotiations upon Certain Circumstances - Notwithstanding anything to the contrary in this Sanction Agreement, if:

(i) the NS Regulatory Application (including any application Emera may make under **Section 4(f)** for approval of the Maritime Link) is ultimately denied,

(ii) the NS Regulatory Application is approved with Other Conditions, unless waived by Emera (and, to the extent that Emera cannot, as a result of a Final UARB Determination,

comply with any of its contractual commitments to Nalcor under one or more of the ML Agreements, waived by Nalcor);

(iii) by the later of Financial Close or the Financial Conditions Resolution Date any one of the conditions precedent under Section 3.5(A) of the Federal Loan Guarantee Agreement has yet to be satisfied; or

(iv) the results of the System Impact Studies are not satisfactory to each of Emera and Nalcor, each having regard to its own interests and in its sole and absolute discretion,

then Nalcor and Emera will attempt to reach a mutually satisfactory resolution of such issues with the goal of ensuring that the Maritime Link is built. For greater clarity, each Party shall be free to make its own decision as to the resolution of such issues in its sole and absolute discretion.

(b) New Maritime Link - Either Nalcor or Emera may give the other 45 days' Notice of conclusion of the discussions under **Section 5(a)**, at which point if Emera has satisfied its conditions precedent under Section 3.5(A) of the Federal Loan Guarantee Agreement, and Nalcor and Emera are both interest holders or owners of the LIL, then:

(i) Nalcor and Emera agree that they shall continue to work together with the intention of developing transmission facilities to be constructed between the Island Interconnected System and the Nova Scotia Transmission System (the "**New Maritime Link**"), and to develop the necessary financial, contractual, and regulatory arrangements required to facilitate the development and construction of the New Maritime Link. Section 1.2(m)(iii) of the ML-JDA applies to this **Section 5(b)(i)**;

(ii) neither Nalcor nor Emera shall construct the New Maritime Link without the involvement and participation of both Nalcor and Emera, unless otherwise agreed; and

(iii) at any time after five years from the date of this Sanction Agreement, either Nalcor or Emera may give the other 90 days' Notice of termination of the commitments provided for in **Section 5(b)(i) and (ii)**.

(c) Amendment of the Nova Scotia Transmission Utilization Agreement - If the New Maritime Link is developed and constructed under the arrangements negotiated and executed pursuant to **Section 5(b)(i)**, Emera will provide Nalcor with transmission rights in material accordance with the provisions of the Nova Scotia Transmission Utilization Agreement.

(d) Interim New Brunswick and MEPCO Transmission Rights Agreements - If Emera has satisfied its conditions precedent under Section 3.5(A) (ii) and (viii) of the Federal Loan

Guarantee Agreement, Emera has invested in the Labrador-Island Link and the Maritime Link does not proceed pursuant to the ML-JDA, Nalcor and Emera shall enter into the Interim Agreements referenced in **Schedule 1** in accordance with the terms set out in that schedule.

- (e) Transition from ML-JDA – Upon conclusion of the discussions in **Section 5(a)**, Nalcor and Emera will work together to develop the New Maritime Link in accordance with **Section 5(b)** and Sections 8.7(a)-(e) of the ML-JDA will apply and Emera and Nalcor shall share equally any costs imposed on Emera under Section 3.5(A)(viii)(a) of the Federal Loan Guarantee Agreement.

6. Amendments to the Formal Agreements

- (a) The Parties agree to make specific amendments to the Formal Agreements for the sole purpose of reflecting the terms of this Sanction Agreement on or before February 15, 2013. For greater certainty, this Sanction Agreement is not contingent upon the execution of any such amendments or amending agreements. If there is a conflict between any provision of this Sanction Agreement and any Formal Agreement, the provision of this Sanction Agreement shall prevail.
- (b) For greater certainty (and without derogating from the generality of the foregoing):
 - (i) Sections 8.1 and 8.2 of the ML-JDA and the definition of Pre-Sanction Costs in the ML-JDA will be amended to ensure that the applicable obligations are triggered at the Financial Conditions Resolution Date rather than the date of Sanction, and that the rights and obligations associated with compensation under those sections will be triggered at that date; and
 - (ii) Sections 5.2(f)-(h), 5.5(b)-(h), 5.7 and 8.6 of the ML-JDA will be deleted.

Provisions in this Sanction Agreement which are subsequently documented in amendments to the Formal Agreements shall be void upon execution of the amended Formal Agreements as applicable. This Sanction Agreement shall terminate upon the satisfaction of all the obligations of the respective Parties as set out herein.

7. Undertakings

- (a) Emera agrees to commence, no later than four weeks after the filing of the NS Regulatory Application, the formal process with the credit rating agencies to obtain indicative credit ratings required to satisfy the condition precedent in Section 3.5(A)(ii) of the Federal Loan Guarantee Agreement. Emera will seek to develop a commercially reasonable schedule to achieve the indicative credit ratings targeting the achievement of such ratings no later than March 31, 2013.

- (b) Emera agrees to initiate discussions with Canada by January 15, 2013 regarding the guarantee agreement required to satisfy the condition precedent in Section 3.5(A)(viii) of the Federal Loan Guarantee Agreement. Emera will work with Canada to develop a commercially reasonable schedule targeting the execution of the guarantee agreement by May 31, 2013.
- (c) Emera and Nalcor will use commercially reasonable efforts to complete and analyze the System Impact Studies referred to in **Section 5(a)(iv)** with a target date of April 30, 2013.

8. Conditions Precedent

The obligations of Nalcor pursuant to **Section 4(b) and (c)** are conditional upon Emera satisfying the conditions precedent in Sections 3.5(A)(ii) and (viii) of the Federal Loan Guarantee Agreement and providing such confirmation to Nalcor.

9. Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Sanction Agreement, (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 to Schedule 4 of the ML-JDA, which is incorporated into this Sanction Agreement by reference.
- (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 9(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 9** will be null and void.

10. Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of this Sanction Agreement, (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 to Schedule 4 of the ML-JDA, which is incorporated into this Sanction Agreement by reference.

- (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 10(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 10(a)** will be null and void.

11. Dispute Resolution

This Sanction Agreement shall be subject to the Dispute Resolution Procedure (“DRP”) set forth in Schedule 5 of the ML-JDA, which is incorporated into this Sanction Agreement by reference.

12. Governing Law

This Sanction Agreement shall be governed by and construed in accordance with the laws of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Section 11** of this Sanction Agreement, 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.

13. Confidentiality

- (a) Incorporation of Project NDA – Nalcor and Emera agree that the Project NDA is incorporated in this Sanction Agreement by reference and applies to all Confidential Information disclosed by either Nalcor and Emera to the other under or in connection with this Sanction 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. The foregoing shall not apply to any disclosure by a Party required in order to comply with Applicable Law.

(b) Disclosure of Sanction Agreement – Notwithstanding **Section 13(a)**, this Sanction Agreement may be disclosed publicly at any time by or on behalf of either Nalcor or Emera.

14. Legally Binding Commitment

The Parties intend to be and are hereby legally bound by the terms and conditions of this Sanction Agreement.

15. Counterparts

This Sanction 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 Sanction Agreement.

16. 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 Sanction Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

17. Relationship of the Parties

The Parties hereby disclaim any intention to create by this Sanction Agreement any partnership, joint venture, association, trust, or fiduciary relationship between them. Except as expressly provided herein, neither this Sanction Agreement nor any other agreement or arrangement between the Parties pertaining to the Muskrat Falls Project, Labrador Transmission Assets, Labrador-Island Link, and the Maritime Link shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of another Party for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of another Party.

18. 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 Sanction Agreement.

19. Severability

If any provision of this Sanction 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 Sanction Agreement or its legality, validity or enforceability in any other

jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

20. Time of the Essence

Time shall be of the essence.

21. Amendments

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

22. No Waiver

Any failure or delay of any Party to enforce any of the provisions of this Sanction Agreement or to require compliance with any of its terms from time to time shall not affect the validity of this Sanction 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 Sanction 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.

23. No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Sanction Agreement is not made for the benefit of any Person not a party to this Sanction 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 Sanction Agreement.

24. Survival

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

25. 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 DRP, (ii) any judicial, administrative or other proceedings to aid the DRP, 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 DRP 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.

26. Successors and Assigns

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

27. Capacity of Nalcor

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

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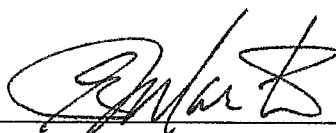
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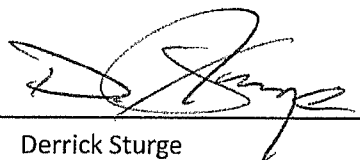
IN WITNESS WHEREOF, the Parties have executed this Sanction Agreement as of the date first written above.

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

NALCOR ENERGY

By: 

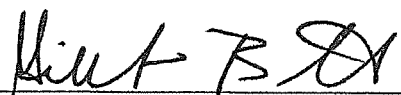
Name: Ed Martin
Title: President and Chief Executive Officer

By: 

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



Name:

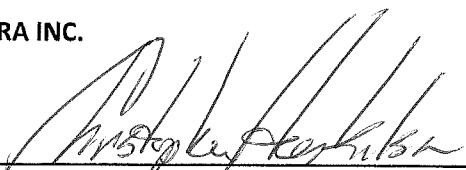
By: 

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

We have authority to bind the corporation.

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

EMERA INC.

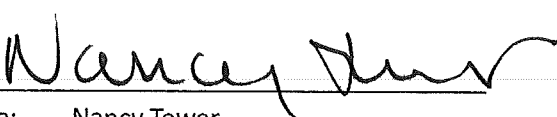
By: 

Name: Chris Huskison
Title: President and Chief Executive Officer



Name:

Peter Doig

By: 

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

We have authority to bind the company.

SANCTION AGREEMENT

SCHEDULE 1

PRINCIPLES GOVERNING INTERIM AGREEMENTS

Schedule 1

Principles Governing Interim Agreements

In the event that Interim Agreement(s) are to be entered into by Nalcor and Emera pursuant to **Section 5(d)** of this Sanction Agreement, such agreements shall be implemented by Nalcor and Emera in accordance with this Schedule 1.

1.0 Definitions

The following definitions apply in this Schedule in addition to the definitions provided for in Article 1 of this Sanction Agreement:

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

"Equivalent Rights" has the meaning set forth in the NBTUA;

"Interim Agreements" has the meaning set forth in Section 2.0(a) of this Schedule 1;

"MEPCO TRA" means the MEPCO Transmission Rights Agreement;

"MEPCO Interim Agreement" has the meaning set forth in Section 2.0(a) of this Schedule 1;

"MFP First Power Date" means the day after the date of the start-up and successful completion of testing activities required to demonstrate that one generation unit of the MFP is ready for reliable and safe provision of Energy, Capacity and ancillary services;

"NBSO" has the meaning set forth in the NBTUA;

"NBTUA" means the New Brunswick Transmission Utilization Agreement;

"NB Interim Agreement" has the meaning set forth in Section 2.0(a) of this Schedule 1;

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

"NB Tariff" has the meaning set forth in the NBTUA;

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

"QC-NYISO Border" means a point of interconnection in Canada closest to the border between Quebec and New York where the Hydro-Québec transmission system connects to the transmission system operated by the New York Independent System Operator;

“**QC-NB Border**” means a point of interconnection located at the border of Quebec and New Brunswick where the Hydro-Québec transmission system connects to the NB Power transmission system, as such interconnections may be modified from time to time;

“**Scheduling Protocol**” has the meaning set forth in the NBTUA or the MEPCO TRA, as the context requires; and

“**Tariff Charges**” has the meaning set forth in the NBTUA.

2.0 General

- a) Nalcor and Emera shall enter into the Transmission Rights agreements contemplated by this Schedule 1 (the “**NB Interim Agreement**” and the “**MEPCO Interim Agreement**”, collectively the “**Interim Agreements**”) by no later than the date that is six months following the later of: (i) the date upon which Emera has subscribed for its partnership interest in the LIL, and (ii) the date upon which it is determined that the Maritime Link will not be proceeding as contemplated by the ML-JDA. Nalcor and Emera shall each use commercially reasonable efforts to reach agreement with the other, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. In the event that Nalcor and Emera cannot reach agreement on all of the terms and conditions to be included in the Interim Agreements by the foregoing date, then the failure to reach agreement in respect of the outstanding terms and conditions of the Interim Agreements shall be deemed to be a “Dispute” to be resolved pursuant to Section 5.1 of the DRP. In such event, Nalcor and Emera shall be deemed to have agreed to resolve the Dispute by arbitration, in accordance with Section 5.1(e) of the DRP. To the extent possible, Nalcor and Emera shall agree on as many of the terms and conditions as possible and limit any Dispute to only those terms and conditions that cannot be agreed.
- b) The Transmission Rights provided for by the Interim Agreements shall become effective on the MFP First Power Date.
- c) Subject to Section 3.0(h) of this Schedule 1, the Transmission Rights provided for in the Interim Agreements shall continue in force until the earlier of:
 - i. the date that is 50 years following the MFP First Power Date; and
 - ii. the date upon which the NBTUA and MEPCO TRA come into effect on the basis described in Section 2.0(d)(ii) of this Schedule 1.
- d) Subject to Section 3.0(h) of this Schedule 1, upon commencement of commercial operation of the New Maritime Link following the coming into force of the Interim Agreements:

- i. the NBTUA and the MEPCO TRA shall supersede the Interim Agreements and apply in their original forms, except as provided for in this Schedule 1; and
- ii. the Transmission Rights granted by the NBTUA and the MEPCO TRA shall come into effect. For greater certainty, the term of such Transmission Rights shall remain as 50 years, with such 50 year term commencing upon the commercial operation of the New Maritime Link, provided that the "First Term" of the NBTUA shall end on March 31, 2026.

3.0 NB Interim Agreement

- a) Nalcor and Emera agree that, except as varied expressly or by implication in accordance with this Schedule 1, the covenants, representations and warranties and general provisions set out in the NBTUA shall form the basis of, and be restated in, the NB Interim Agreement. Notwithstanding the foregoing, Nalcor and Emera may, in developing the NB Interim Agreement, mutually agree to make such other variations to the terms of the NBTUA as are necessary or desirable to accommodate changes in circumstances that have arisen since the execution of the NBTUA.
- b) The "First Term" of the NB Interim Agreement shall end on March 31, 2026, as currently provided for in the NBTUA.
- c) Section 2.1(d) of the NBTUA shall be revised in the NB Interim Agreement to provide that the contemplated Capacity agreement will be entered into by no later than one year prior to the scheduled commissioning of the MFP.
- d) Subject to Section 3.0(h) of this Schedule 1, all references in the NBTUA to Nalcor's rights to require that Emera request that the NBSO redirect the point of receipt associated with the Bayside Rights or the Equivalent Rights shall be revised such that:
 - i. Nalcor shall have the right to require Emera to request the redirection of the point of receipt associated with the Bayside Rights or the Equivalent Rights, as applicable, to either (A) the NS-NB Border, or (B) the QC-NB Border; and
 - ii. such requests for redirection shall be limited only by provisions of the NB Tariff.
- e) The mechanism provided for at Section 2.3(a) of the NBTUA shall be deleted and the mechanisms set forth in Section 2.3(b) of the NBTUA shall be revised to provide that:
 - i. Nalcor shall be entitled to require Emera to purchase Energy and/or Capacity at the QC-NYISO Border and to re-sell such Energy and/or Capacity to Nalcor at the NB-Maine Border;

- ii. The physical transmission losses to be netted shall be those that would have been incurred had such Energy and/or Capacity been transmitted from the QC-NB Border to the NB-Maine Border; and
 - iii. Sections 2.3(b)(iii) of the NBTUA shall be revised such that Nalcor shall be responsible for the Tariff Charges that would have been payable pursuant to the NB Interim Agreement had the Bayside Rights been utilized by Nalcor to transmit such Energy and/or Capacity from the QC-NB Border to the NB-Maine Border.
- f) The mechanism set forth in Section 3.2(b) of the NBTUA shall be revised to provide that the Energy to be purchased by Emera from Nalcor in the contemplated circumstances shall be purchased at the QC-NYISO Border.
- g) References in the NBTUA to Nalcor's Transmission Rights being in respect of a path from the NS-NB Border to the NB-Maine Border shall be revised to reflect the specific commercial arrangements and transmission paths provided for by the NB Interim Agreement.
- h) By no later than March 31, 2019, Nalcor shall, by Notice to Emera, elect the point of receipt in respect of the Transmission Rights described in Sections 3.1(a) and (b) of the NBTUA, in accordance with the following provisions:
- i. Nalcor shall elect either the QC-NB Border or the NS-NB Border;
 - ii. the election shall be irrevocable; and
 - iii. if Nalcor elects the QC-NB Border:
 - 1) at no time shall the NBTUA supersede the NB Interim Agreement or have any further effect;
 - 2) the NB Interim Agreement will remain in effect and will terminate on the later of (i) the date that is 50 years following the MFP First Power Date and (ii) if applicable, the date that is 50 years following commencement of commercial operation of the New Maritime Link; and
 - 3) if the election is in respect of the Transmission Rights described in Section 3.1(b) of the NBTUA, then the definition of "NB Transmission Line" shall be revised accordingly to refer to a transmission line from the QC-NB Border to the NB-Maine Border.
- i) Nalcor and Emera shall agree that the Scheduling Protocol will be revised, as reasonably required, to reflect any changes necessitated by the commercial arrangements contemplated by the NB Interim Agreement.

4.0 MEPCO Interim Agreement

- a) Nalcor and Emera agree that, except as varied expressly or by implication in accordance with this Schedule 1, the covenants, representations and warranties and general provisions set out in the MEPCO TRA shall form the basis of, and be restated in, the MEPCO Interim Agreement. Notwithstanding the foregoing, Nalcor and Emera may, in developing the MEPCO Interim Agreement, mutually agree to make such other variations to the terms of the MEPCO TRA as are necessary or desirable to accommodate changes in circumstances that have arisen since the execution of the MEPCO TRA.

- b) Nalcor and Emera shall agree that the Scheduling Protocol will be revised, as reasonably required, to reflect any changes necessitated by the commercial arrangements contemplated by the MEPCO Interim Agreement.