

**HIBERNIA DEVELOPMENT PROJECT  
ALLOCATION AGREEMENT**

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**HIBERNIA DEVELOPMENT PROJECT ALLOCATION AGREEMENT**

THIS AGREEMENT DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010,

AMONG:

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR** (the "Province")

- and -

**EXXONMOBIL CANADA PROPERTIES**, a partnership established under the laws of the Province of Alberta, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("ExxonMobil Partnership")

-and-

**EXXONMOBIL CANADA HIBERNIA COMPANY LTD.**, a body corporate incorporated pursuant to the laws of Canada, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("ExxonMobil Hibernia")

-and-

**EXXONMOBIL CANADA LTD.**, a body corporate incorporated pursuant to the laws of Canada, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("ExxonMobil")

-and-

**PETRO-CANADA HIBERNIA PARTNERSHIP**, a partnership established under the laws of the Province of Alberta, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("Petro-Canada Partnership")

-and-

**SUNCOR ENERGY INC.**, a body corporate amalgamated under the laws of Canada, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("Suncor")

-and-

**CHEVRON CANADA RESOURCES**, a partnership established under the laws of the Province of Alberta, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("Chevron Partnership")

-and-

**CHEVRON CANADA LIMITED**, a body corporate incorporated under the laws of Canada, having an office in the City of Calgary, in the Province of Alberta ("Chevron")

-and-

**CANADA HIBERNIA HOLDING CORPORATION**, a body corporate incorporated pursuant to the laws of Canada, having an office in the City of Calgary, in the Province of Alberta ("CHHC")

-and-

**MURPHY ATLANTIC OFFSHORE OIL COMPANY LTD.**, a body corporate incorporated pursuant to the laws of Canada, having an office in the City of Calgary, in the Province of Alberta ("Murphy Oil")

-and-

**STATOIL CANADA LTD.**, a body corporate incorporated pursuant to the laws of Alberta, having an office in the City of St. John's, in the Province of Newfoundland and Labrador ("Statoil")

-and-

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**NALCOR ENERGY - OIL AND GAS INC.**, a body corporate incorporated pursuant to the laws of Newfoundland and Labrador ("Nalcor Oil")

**WHEREAS:**

1. The parties hereto are bound by the Royalty Agreements;
2. In order to calculate the royalty shares payable pursuant to the Royalty Agreements, it is necessary for the parties hereto to allocate production, costs, sales volumes and revenues; and
3. The parties hereto wish to enter into this Agreement to set forth the rights and obligations necessary to effect such allocations.

**NOW THEREFORE WITNESS** that for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each of the parties to this Agreement, each of the parties hereto covenants and agrees as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.1 Definitions**

In this Agreement, unless expressly stated to the contrary, capitalized words and phrases used in this Agreement shall have the following meaning:

- (1) **"Accord Acts"** means the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*, R.S.N.L. 1990, c. C-2, and includes the regulations made and, from time to time, in force under that Act (the "Provincial Accord Act"), and the *Canada-Newfoundland Atlantic Accord Implementation Act*, S.C. 1987 c. 3, and includes the regulations made and, from time to time, in force under that Act (the "Federal Accord Act").
- (2) **"Acknowledgement Agreement"** means an agreement in the form of Schedule A.
- (3) **"Actual Cash Payment"** means, in addition to payments in cash, payments by cheque, bank draft, bank transfer or other instruments transferring credits of money.
- (4) **"Affiliate"** means, with respect to a Person, any Person that controls it, that is controlled by it or that is under common control with it and:
  - (i) if two Persons are Affiliates of a Person at the same time, they are Affiliates of each other;
  - (ii) for the purposes of this definition, "control" means control in fact, including the ability, directly or indirectly and whether or not exercised, to direct the management or policies of a Person, whether through the ownership of securities, by contract, trust or otherwise howsoever;
  - (iii) in relation to a corporation, includes all Subsidiaries of that corporation, each corporation of which it is a Subsidiary and all Subsidiaries of each corporation of which it is a Subsidiary;
  - (iv) each Person which is an Affiliate of that first Person by virtue of items (i), (ii) or (iii) of this definition is an Affiliate of each limited partnership of which the first Person or any Affiliate of the first Person is a general partner and of each partnership other than a limited partnership which the first Person and/or any Affiliate of the first Person controls by virtue of item (ii) of this definition; and

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- (v) a Person controlled by virtue of item (ii) of this definition by two or more Project Owners is an Affiliate of each of those Project Owners. For the purposes of this item, "Project Owner" includes each Person which is an Affiliate of the Project Owner.
- (5) **"Arbitration"** means the provisions of Schedule F.
- (6) **"Arbitration Code"** means the provisions of Schedule G.
- (7) **"Arm's Length"** shall have the meaning given by section 251 of the Income Tax Act (Canada) as of the date of this Agreement, as judicially interpreted, to "arm's length" provided, however, that in connection with a sale or an acquisition of an asset other than Hibernia Blend or of a service, the following will not be at Arm's Length:
  - (i) a sale or acquisition involving a Project Owner or an Affiliate of a Project Owner and one or more of the Project Owners and any Affiliate of a Project Owner;
  - (ii) where the consideration is payable otherwise than solely in cash;
  - (iii) the contract price is not the sole consideration for the sale or transaction;
  - (iv) the contract terms are materially affected by any commercial relationship (other than that created by the contract itself) among any of the parties thereto or anyone not otherwise at Arm's Length with such parties;
  - (v) such other circumstances as the Province may reasonably declare, after discussion with the Project Owners, not to be at Arm's Length and any disagreement that a Project Owner may have with any such declaration by the Province which cannot be resolved by discussions with the Province may be submitted to arbitration by the Project Owner.
- (8) **"Audit Period"** means the six (6) calendar years following the calendar year in which royalties were payable pursuant to the Royalty Agreements or in which a Resource Project Eligible Cost, Resource Project Eligible Marketing Cost, or an Eligible Transportation Cost was paid.
- (9) **"Barrel"** means 0.1589873 cubic metres, which shall for purposes of this Agreement be the equivalent of 42 U.S. gallons or 34.9722 Canadian gallons, when measured at a temperature of 60 degrees Fahrenheit.
- (10) **"Blocks"** means a section of a reservoir separated from an adjacent section of that reservoir by one or more faults.
- (11) **"Board"** means the Canada-Newfoundland and Labrador Offshore Petroleum Board established by the Accord Acts.
- (12) **"Capital Cost Adjustment"** has the meaning set out in subclause 20.1(d).
- (13) **"Capital Lease Shuttle Tanker"** means a Shuttle Tanker that is classified in accordance with Article 6 of Schedule E as being leased under a capital lease in which one or more of the Project Owners or Licensees is a lessee.
- (14) **"Compliance Person"** has the meaning set out in clause 11.8.
- (15) **"Crude Oil"** means hydrocarbons which at atmospheric pressure are in liquid form when loaded into tankers and include non-hydrocarbon contaminants.
- (16) **"EL1093"** means Exploration Licence 1093 issued by the Board dated January 15, 2005, provided that upon the issuance of the first significant discovery licence or the first production licence or other similar right that is issued and that supercedes such exploration licence in relation to the geographic area that is currently the subject of EL1093, all references to EL1093 shall instead be read as referring to that successor significant discovery licence, production licence, or other similar right.

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- (17) "**EL1093/PL1005 Royalty Area**" means the geographic areas that are the subject of EL1093 and PL1005.
- (18) "**EL1093 Non-Unit Area**" means the EL1093 Area included in the EL1093/PL1005 Royalty Area excluding the EL1093 Unit Area.
- (19) "**EL1093/PL1005 Royalty Agreement**" means the Agreement made amongst the parties hereto entitled the "Hibernia Development Project EL1093/PL1005 Royalty Agreement" dated February 16, 2010.
- (20) "**EL1093/PL1005 Sales Volume**" has the meaning set out in subclause 21.2(b).
- (21) "**EL1093 Area**" means the geographic area specified as the "Lands" in EL1093.
- (22) "**EL1093 Unit Area**" means that portion of the Unit Intervals within the EL1093 Area contained within the EL1093/PL1005 Royalty Area.
- (23) "**Effective Redetermination Date**" has the meaning set out in the Unit Agreement.
- (24) "**Eligible Transportation Costs**" means the transportation costs set out in Article 5 of Schedule E and that are calculated pursuant to Schedule E.
- (25) "**Extraordinary Operating Costs**" has the meaning set out in the Unit Agreement and also meets the eligibility criteria set out in the Royalty Agreements.
- (26) "**Fiscal Agreements**" means this Agreement, the PL1001 Royalty Agreement and the EL1093/PL1005 Royalty Agreement.
- (27) "**Flow System and Allocation Procedure**" means the Flow System and Flow Calculation Procedure and the Allocation Procedure applicable to Hibernia Blend as is approved by the Board from time to time.
- (28) "**GBS**" means the Hibernia gravity base structure located on PL1001 and commissioned in 1997.
- (29) "**GBS Operator**" means the Person that is the Resource Project Operator-PL1001 and that performs the operating services set forth in the services agreement between HMDC and the Project Owners and is the Person issued an operations authorization by the Board relating to the production of Hibernia Blend, which as of the effective date is HMDC.
- (30) "**HMDC**" means Hibernia Management and Development Company Ltd., a company incorporated and existing under the laws of Canada and registered to conduct business in Newfoundland and Labrador.
- (31) "**Hibernia Blend**" means Crude Oil processed through the GBS which is produced pursuant to PL1001, PL1005 or EL1093 and includes any blend of such Crude Oil processed through the GBS and produced from two or more of PL1001, PL1005 and EL1093.
- (32) "**Hibernia Blend Gross Sales Revenue**" means for a Project Owner, for any Month or Period, the sum of the products obtained by multiplying the number of Barrels of Hibernia Blend delivered at the Sale Point during the Month or Period, as the case may be, by the Sale Price of the Project Owner applicable to each such Barrel delivered.
- (33) "**Hibernia-Sand Reservoir(s)**" means the Hibernia reservoir sands (Pools A & B).
- (34) "**Interim Tanker Cost Compiler**" means ExxonMobil Canada Properties.
- (35) "**Imbalance Adjustment Date**" means the day on which the Projects Owners receive notification pursuant to Section 3.1(m) of Schedule "C" of the Unit Agreement.
- (36) "**Joint Account - PL1001**" means "Joint Account" as defined in the PL1001 Royalty Agreement.

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(37) **"Joint Account - EL1093"** means "Joint Account" as defined in EL1093/PL1005 Royalty Agreement.

(38) **"Joint Account - PL1005"** means "Joint Account" as defined in EL1093/PL1005 Royalty Agreement.

(39) **"Licensees"** means the license holders of PL1001, PL1005 and/or EL1093 and any Successors thereto which have become bound by this Agreement and "Licensee" means any one of the Licensees.

(40) **"Loading Point"** means the final point of measurement on the GBS or facilities physically connected thereto for loading Hibernia Blend into tankers.

(41) **"Month"** means a calendar month.

(42) **"Nalcor Tariffs"** has the meaning set out in subclause 22.2(c).

(43) **"Net Royalty Payout PL1001"** means "Net Royalty Payout" as defined in the PL1001 Royalty Agreement.

(44) **"Net Royalty Payout EL1093/PL1005"** means "Net Royalty Payout" as defined in the EL1093/PL1005 Royalty Agreement.

(45) **"Newfoundland and Labrador"** means the Province of Newfoundland and Labrador.

(46) **"Non-Unit Production Areas"** has the meaning set out in subclause 17.1(b).

(47) **"Offshore Area"** has the meaning that is given to "offshore area" in the Accord Acts.

(48) **"Operating Lease Shuttle Tanker"** means a Shuttle Tanker that is classified in accordance with Article 6 of Schedule E as being leased under an operating lease to which one or more of the Project Owners or Licensees is a lessee.

(49) **"Owned Shuttle Tanker"** means a Shuttle Tanker in which one or more of the Project Owners or Licensees has an ownership interest.

(50) **"PL1001"** means that production licence dated March 21, 1990, numbered 1001 and issued by the Board and includes all replacements therefor, substitutions therefor and amendments and successors thereto in relation to the specific geographic scope of the PL1001 Area.

(51) **"PL1001 AA Blocks Royalty Area"** means the geographic area within PL1001 bounded by

- (i) the vertical plane from seafloor to the top of the Hibernia-Sand Reservoir as depicted in Schedule B;
- (ii) the fault plane from the top to the base of the Hibernia-Sand Reservoir as depicted in Schedule B; and
- (iii) the vertical plane from the base of the Hibernia-Sand Reservoir to the basement as depicted in Schedule B.

(52) **"PL1001 Area"** means the "Lands" described in PL1001, being 46°50'N 48°30'W: Sections 76, 77, 78, 85, 86, 87, 88, 94, 95, 96, 97, 98, 99 and 46°50'N 48°45'W: Sections 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 61, 62, 63.

(53) **"PL1001 Royalty Agreement"** means the Agreement entitled the "Hibernia Development Project Royalty Agreement" dated September 1, 1990, as amended.

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(54) **"PL1001 Balance Royalty Area"** means PL1001 Area excluding the PL1001 AA Blocks Royalty Area and excluding the PL1001 Southern Royalty Area.

(55) **"PL1001 Non-Unit AA Blocks Main Area"** means the PL1001 AA Blocks Royalty Area excluding the PL1001 Non-Unit AA Blocks Secondary Reservoir Area and excluding the PL1001 Unit AA Blocks Southern Secondary Reservoir Area.

(56) **"PL1001 Non-Unit AA Blocks Secondary Reservoir Area"** means any Blocks or portions of Blocks that are contained within the PL1001 AA Blocks Royalty Area and that are not contained in the Hibernia-Sand Reservoir(s) and are not contained within the PL1001 Unit AA Blocks Southern Secondary Reservoir Area.

(57) **"PL1001 Non-Unit Balance Area"** means the PL1001 Balance Royalty Area excluding the PL1001 Unit Balance Area.

(58) **"PL1001 Non-Unit Area"** means collectively PL1001 Non-Unit AA Blocks Main Area, PL1001 Non-Unit AA Blocks Secondary Reservoir Area, PL1001 Non-Unit Southern Equity Area, PL1001 Non-Unit Balance Area and PL1001 Non-Unit Southern Non-Equity BNA Area.

(59) **"PL1001 Non-Unit Southern Equity Area"** means the PL1001 Southern Royalty Area excluding the PL1001 Non-Unit Southern Non-Equity BNA Area and excluding the PL1001 Unit Southern Equity Area.

(60) **"PL1001 Non-Unit Southern Non-Equity BNA Area"** means that portion of the Ben Nevis Avalon reservoirs delineated by the areas bordered and shaded in green in Schedule C which is contained within PL1001 Southern Royalty Area.

(61) **"PL1001 Sales Volume"** has the meaning set out in subclause 21.2(a).

(62) **"PL1001 Southern Royalty Area"** means the geographic area within PL1001 bounded by:

- (i) the vertical plane from the seafloor to the top of the Hibernia-Sand Reservoir as depicted in Schedule D;
- (ii) the fault plane from the top to the base of the Hibernia-Sand Reservoir as depicted in Schedule D; and
- (iii) the vertical plane from the base of the Hibernia-Sand Reservoir to the basement as depicted in Schedule D.

(63) **"PL1001 Unit AA Blocks Southern Secondary Reservoir Area"** means that portion of the Unit Intervals contained within the PL1001 AA Blocks Royalty Area that are not contained in the Hibernia-Sand Reservoir(s).

(64) **"PL1001 Unit Balance Area"** means the balance of the Unit Intervals, if any, contained within the PL1001 Royalty Area, excluding the PL1001 Unit Southern Equity Area and excluding the PL1001 Unit AA Blocks Southern Secondary Reservoir Area.

(65) **"PL1001 Unit Southern Equity Area"** means that portion of the Unit Intervals contained within the PL1001 Southern Royalty Area.

(66) **"PL1005"** means that production licence dated January 14, 2003, numbered 1005 and issued by the Board and includes all replacements therefor, substitutions therefor and amendments and successors thereto in relation to the specific geographic scope of the PL1005 Area.

(67) **"PL1005 Area"** means the "Lands" described in PL1005, being 46°50'N 48°30'W: Section 92; and 46°50'N 48°45'W: Sections 2, 12, and 22.

(68) **"PL1005 Non-Unit Area"** means the PL1005 Area included in the EL1093/PL1005 Royalty Area but excluding the PL1005 Unit Area.

PL1001  
PL1005  
PL1005 Non-Unit Area  
PL1005 Unit Area  
EL1093/PL1005 Royalty Area  
46°50'N 48°30'W: Section 92  
46°50'N 48°45'W: Sections 2, 12, and 22

(69) **"PL1005 Unit Area"** means that portion of the Unit Intervals within the PL1005 Area contained within the EL1093/PL1005 Royalty Area.

(70) **"Period"** means a calendar year, except where a period is other than a calendar year pursuant to the Royalty Agreements. In such instance the start of a new period will be triggered upon the start of a new period under either of the Royalty Agreements and will end upon the earlier of the end of that calendar year or the triggering of a new period under either of the Royalty Agreements.

(71) **"Person"** means a natural person, firm, trust, partnership, association, corporation, unincorporated organization, union, government or government agency.

(72) **"Post-Transition Period"** means any time after, but not before, 12:01 am on July 1, 2009.

(73) **"Pre-Development Costs"** has the meaning set out in the EL1093/PL1005 Royalty Agreement.

(74) **"Prime Rate"** means the prime interest rate for Canadian dollar commercial loans as declared from time to time by the principal banker to the Province that is in effect on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> of every calendar year, with the rates established on those dates remaining constant for a period of three months from the dates indicated.

(75) **"Project Owners"** means, collectively, ExxonMobil Partnership, Chevron Partnership, Petro-Canada Partnership, Murphy Oil, CHHC, ExxonMobil Hibernia, Statoil, and Nalcor Oil, and any Successors who have become bound by this Agreement and **"Project Owner"** means any one of the Project Owners.

(76) **"Redetermined Tract Participations"** has the meaning set out in the Unit Agreement.

(77) **"Resource Project Eligible Cost"** has the meaning set out in the PL1001 Royalty Agreement or the EL1093/PL1005 Royalty Agreement, as the context requires.

(78) **"Resource Project Eligible Capital Cost"** has the meaning set out in the PL1001 Royalty Agreement or the EL1093/PL1005 Royalty Agreement, as the context requires.

(79) **"Resource Project Eligible Marketing Cost"** has the meaning set out in the PL1001 Royalty Agreement or the EL1093/PL1005 Royalty Agreement, as the context requires.

(80) **"Resource Project Eligible Operating Cost"** has the meaning set out in the PL1001 Royalty Agreement or the EL1093/PL1005 Royalty Agreement, as the context requires.

(81) **"Resource Project Incidental Revenue"** has the meaning set out in the PL1001 Royalty Agreement or the EL1093/PL1005 Royalty Agreement, as the context requires.

(82) **"Resource Project Operator-EL1093"** means **"Resource Project Operator-EL1093"** as defined in the EL1093/PL1005 Royalty Agreement.

(83) **"Resource Project Operator-PL1001"** means **"Resource Project Operator"** as defined in the PL1001 Royalty Agreement.

(84) **"Resource Project Operator-PL1005"** means **"Resource Project Operator-PL1005"** as defined in the EL1093/PL1005 Royalty Agreement.

(85) **"Resource Project Operators"** means, collectively, Resource Project Operator-EL1093, Resource Project Operator-PL1001 and Resource Project Operator-PL1005, and **"Resource Project Operator"** means any one of the Resource Project Operators.

(86) **"Responsible Project Owners"** has the meaning set out in clause 11.8.

(87) **"Restated Royalty Inventory"** has the meaning set out in item 21.1(a)(i).

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(88) **"Royalty Adjustment Re-Filing"** has the meaning set out in subclause 20.5(a).

(89) **"Royalty Adjustment Statement"** has the meaning set out in clause 20.1.

(90) **"Royalty Areas"** means, collectively, PL1001 AA Blocks Royalty Area, PL1001 Southern Royalty Area, PL1001 Balance Royalty Area and EL1093/PL1005 Royalty Area and **"Royalty Area"** means any one of the Royalty Areas.

(91) **"Royalty Agreements"** means PL1001 Royalty Agreement and EL1093/PL1005 Royalty Agreement.

(92) **"Royalty Inventory"** has the meaning set out in clause 21.1.

(93) **"Royalty Inventory Adjustment"** has the meaning out in item 21.1(a)(ii).

(94) **"Royalty Share PL1001"** means Royalty Share as defined in the PL1001 Royalty Agreement.

(95) **"Royalty Share EL1093/PL1005"** means Royalty Share as defined in the EL1093/PL1005 Royalty Agreement.

(96) **"Sale Point"** means:

- (i) the point at which title to Hibernia Blend of a Project Owner is passed to a Person who is not that Project Owner;
- (ii) where title to Hibernia Blend, prior to being refined or finally consumed, does not pass to a Person who is not that Project Owner, the point which is the entry valve into the refinery or consuming facility; or
- (iii) the Sale Point pursuant to clause 2.1 or 2.2 of Schedule E.

(97) **"Sale Price"** means, with respect to each transfer at the Loading Point by a Project Owner of a Barrel of Hibernia Blend, the actual sale price received therefor at the Sale Point subject to the Province's right of redetermination or recalculation of the Sale Price in accordance with the provisions of the Royalty Agreements and subject to the Project Owner's right to submit the Sale Price to be determined by arbitration in accordance with the provisions of the Royalty Agreements.

(98) **"Shuttle Tanker"** means a tanker that is normally used in the Offshore Area to transport Hibernia Blend from the production facilities used to produce it to either the Whiffen Head Transshipment Terminal or to the Sale Point.

(99) **"Subsidiary"** of a corporation (the **"parent"**) means a corporation (the **"subject corporation"**):

- (i) that is controlled in fact by the parent or in respect of which the parent otherwise possesses the ability (whether or not exercised) to control or direct, directly or indirectly, its policies, business and affairs, including by election to its board of directors; or
- (ii) in respect of which the parent, the parent and any other corporation each of which is a Subsidiary of the parent, or any other corporation, each of which is a Subsidiary of the parent, owns beneficially, directly or indirectly, at least fifty per cent (50%) of the voting securities of the subject corporation or such securities of the subject corporation as are sufficient to elect a majority of the board of directors of the subject corporation.

(100) **"Successors"** means a Person who has acquired from a Project Owner any part of the Working Interest in PL1001, PL1005 or EL1093 to which the Project Owner was entitled.

(101) **"Supplementary Royalty Payout PL1001"** means **"Supplementary Royalty Payout"** as defined in the PL1001 Royalty Agreement.

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- (102) "**Supplementary Royalty Payout EL1093/PL1005**" means "Supplementary Royalty Payout" as defined in the EL1093/PL1005 Royalty Agreement
- (103) "**Tanker Administrator**" means a Project Owner, or third party appointed by the Project Owners as the tanker administrator for a Shuttle Tanker or a Temporary Replacement Tanker.
- (104) "**Tanker Cost Aggregator**" has the meaning set out in clause 14.1 of Schedule E.
- (105) "**Tariffs**" means any tariff, fee or other charges paid pursuant to the Tariff Agreement.
- (106) "**Tariff Administrator**" means HMDC, or any Person replacing HMDC which has been designated to administer the Tariff Agreement, or any successor agreement thereof.
- (107) "**Tariff Agreement**" means the agreement made amongst HMDC and the Project Owners entitled the "Tariff Agreement," effective July 15, 2009.
- (108) "**Temporary Replacement Tanker**" means a tanker used to transport Hibernia Blend from production facilities in substitution of a Shuttle Tanker ordinarily used to transport Hibernia Blend from production facilities, where:
  - (i) such tanker is not ordinarily used to transport Hibernia Blend from production facilities; and
  - (ii) the Shuttle Tanker is out of service for repairs or maintenance or otherwise temporarily unavailable for use to transport Hibernia Blend, but is anticipated to be used in the transportation of Hibernia Blend from production facilities within the following 12 months.

A tanker used as a Temporary Replacement Tanker for longer than 12 consecutive months shall thereafter not be considered a Temporary Replacement Tanker, and the eligible cost thereafter shall be determined under the rules for an Owned Shuttle Tanker, a Capital Lease Shuttle Tanker or an Operating Lease Shuttle Tanker, as applicable.

- (109) "**Tract**" has the meaning set out in the Unit Agreement.
- (110) "**Tract Participation**" means the percentage assigned to a Tract, expressed to five decimal places, as set out in Schedule "A" of the Unit Agreement.
- (111) "**Transshipment Operator**" means Newfoundland Transshipment Limited, a body corporate registered to carry on business in the Province.
- (112) "**Unit**" means the Hibernia Southern Extension Unit created pursuant to the Unit Agreement.
- (113) "**Unit Account**" means the provisions of the Unit Agreement and of the Unit Operating Agreement which provide for, and the accounts which show, the charges paid and credits received as a result of operations conducted for the Unit.
- (114) "**Unit Agreement**" means the amended and restated agreement made amongst the parties herein and Her Majesty in Right of Canada entitled "The Amended and Restated Unit Agreement" dated February 16, 2010.
- (115) "**Unit Assets**" means a Resource Project Asset under the PL1001 Royalty Agreement or a Resource Project Asset under the EL1093/PL1005 Royalty Agreement and which was charged to the Unit Account.
- (116) "**Unit Costs**" means a cost or costs charged to the Unit Account.
- (117) "**Unit Incidental Revenue**" means revenue received or deemed or declared, pursuant to PL1001 Royalty Agreement or EL1093/PL1005 Royalty Agreement, received by the Project Owners or the Unit Operator on behalf of the Project Owners from the following:

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- (i) sale or other disposal of Unit Assets;
- (ii) rental or lease or other use of Unit Assets, except as may be approved by the Province;
- (iii) tariffs, fees or other charges paid to Project Owners for use of the Unit Assets;
- (iv) proceeds received pursuant to insurance policies, the premium costs of which were allocated pursuant to this Agreement to Unit Production Areas and were included as:
  - (A) a Resource Project Eligible Cost or a Resource Project Eligible Marketing Cost as those terms are defined in the PL1001 Royalty Agreement; or
  - (B) a Pre-Development Cost, a Resource Project Eligible Cost or a Resource Project Eligible Marketing Cost as those terms are defined in the EL1093/PL1005 Royalty Agreement;

and the proceeds were not used to pay for costs which are:

- (A) except for the operation of item (q) of clause 29.3 of the Royalty Agreements, Resource Project Eligible Costs or Resource Project Eligible Marketing Costs; or
- (B) relate to the risks for which such insurance policies provide coverage;

- (v) salvage and similar proceeds relative to the Unit Assets or assets of Persons other than the Project Owners; and
- (vi) such other revenue received on account of the Unit as the Province may reasonably declare, after discussion with the Project Owners, to be Unit Incidental Revenue.

(118) **“Unit Interest Redetermination”** means the process set out in Schedule C of the Unit Agreement.

(119) **“Unit Interests”** means the unit interests set out in Schedule A of the Unit Agreement as revised from time to time in accordance with the terms of the Unit Agreement.

(120) **“Unit Intervals”** has the meaning set out in the Unit Agreement and which are developed pursuant to the terms of the Unit Agreement.

(121) **“Unit Operator”** means ExxonMobil Canada Properties or any Person replacing ExxonMobil Canada Properties, which has been designated under the Unit Operating Agreement, or successor agreement thereof, to operate the Unit.

(122) **“Unit Operating Agreement”** means the agreement made amongst the Project Owners entitled the “Unit Operating Agreement,” dated 15 July 2009.

(123) **“Unit Operating Costs”** has the meaning set out in the Unit Agreement and which also meet the cost eligibility criteria set out in the Royalty Agreements.

(124) **“Unit Pre-Development Costs”** has the meaning set out in subclause 18.8(c).

(125) **“Unit Production”** means the volume of Hibernia Blend allocated to the Unit pursuant to this Agreement.

(126) **“Unit Production Area”** and **“Unit Production Areas”** has the meaning set out in subclause 17.1(a).

(127) **“Unit Redetermined Capital Costs”** means Unit Capital Costs, Extraordinary Operating Costs, Pre-Production Operating Costs, facilities use fees paid pursuant to the Tariff Agreement and Pre-Unit Costs but specifically excluding Excluded Costs, as these terms are defined in the Unit Agreement, and which also meet the eligibility criteria set out in the Royalty Agreements.

(128) **“Uplifts”** has the meaning set out in clause 20.3.

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(129) "Whiffen Head Transshipment Terminal" means the transshipment terminal used for the storage and transshipment of oil produced from the Offshore Area, located at Whiffen Head, in Newfoundland and Labrador.

(130) "Working Interest" means:

- (i) in respect of PL1001 has the meaning ascribed to such term in the PL1001 Royalty Agreement; and
- (ii) in respect of EL1093 and PL1005, has the meaning ascribed to such term in the EL1093/PL1005 Royalty Agreement.

### **1.2 Definitions within Articles**

Words and phrases defined within a particular Article or clause of this Agreement and stated to be defined only for the purposes of the Article or clause, as the case may be, shall have the meaning given thereto only within the Article or clause as stated and shall not have that meaning elsewhere in this Agreement.

### **1.3 Definitions in Arbitration Code**

The words and phrases defined in Schedule G shall have the meaning given thereto by Schedule G, and by 1.3 of Schedule F, only within Schedule G and shall not have that meaning elsewhere in this Agreement or the Royalty Agreements.

### **1.4 Number and Gender**

Unless the context otherwise requires, in this Agreement:

- (a) words importing the singular shall include the plural and vice versa; and
- (b) words importing a particular gender shall include all genders.

## **ARTICLE 2** **NATURE AND RELATIONSHIP OF AGREEMENT AND ROYALTY**

### **2.1 Relationship to Legislation and Regulations**

- (a) The Province and the Project Owners agree that the calculation and payment methodology and the administration relating to royalties in respect of PL1001, PL1005 and EL1093 shall be consistent in similar circumstances.
- (b) This Agreement is made under subsection (1) of section 33 of the *Petroleum and Natural Gas Act*, R.S.N.L. 1990, c. P-10 and subsection (1) of section 34 of the *Petroleum and Natural Gas Act* as it read immediately before the coming into force of section 47 of the Act (the "Pre-Amendment Act").
- (c) Subject only to subclause (d), this Agreement is inconsistent with the Royalty Regulations, 2003 made under Part II of the *Petroleum and Natural Gas Act* or any other regulation affecting royalties with respect to Hibernia Blend promulgated under Part II of the Act. This Agreement shall prevail within the meaning of subsection (2) of section 33 of the Act, and shall have the effect provided by subsection (2) of section 34 of the Pre-Amendment Act.
- (d) Notwithstanding subclause 2.1(c), this Agreement is not inconsistent with those provisions of Part V, other than section 40, of the *Royalty Regulations, 2003*, relating to a transshipment facility administrator and tanker administrator.

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## ARTICLE 3 SCHEDULES

### 3.1 Schedule References

References herein to a Schedule shall mean a reference to a Schedule to this Agreement. References in a Schedule to "the Agreement" shall mean a reference to this Agreement.

### 3.2 List of Schedules

The Schedules listed below are attached to and form part of this Agreement:

- (a) Acknowledgement Agreement;
- (b) PL1001 AA Blocks Royalty Area;
- (c) PL1001 Non-Unit Southern Non-Equity BNA Area;
- (d) PL1001 Southern Royalty Area;
- (e) Transportation Costs;
- (f) Arbitration;
- (g) Arbitration Code;
- (h) Locked Provisions of Unit Operating Agreement.

### 3.3 Interpretation of Agreement and Schedules

This Agreement and all of the Schedules to this Agreement constitute one and the entire agreement among the parties hereto and, accordingly, this Agreement and all of the Schedules to this Agreement shall be interpreted and enforced as though the provisions of all of the Schedules to this Agreement were set forth in this Agreement prior to the execution page hereof and without giving paramountcy to the provisions of this Agreement or any of the Schedules to this Agreement over the provisions of the other.

## ARTICLE 4 INTERPRETATION

### 4.1 Divisions and Headings

The division of this Agreement into Parts, Articles, clauses, subclauses and items and the insertion of headings are for convenience of reference only and shall not affect or be considered in the construction or interpretation of this Agreement.

### 4.2 Part, Article, Clause, Subclause and Item References

References herein to a Part, Article, clause, subclause or item shall mean a reference to a Part, Article, clause, subclause or item within the body of this Agreement. References herein to a subclause without identifying the clause containing the subclause referred to, shall mean a reference to such subclause within the clause in which the reference is made. References herein to an item without identifying the clause or subclause in which the item is contained shall mean a reference to the item in the same clause or subclause where the reference is made.

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#### **4.3 Statutes, Regulations, Rules and Agreements**

Any reference in this Agreement to all or any part of any statute, regulation, rule or agreement shall, unless otherwise expressly stated herein, be a reference to the statute, regulation, rule or agreement, or part thereof, as amended from time to time.

### **ARTICLE 5 ACCOUNTING**

#### **5.1 Terms**

All accounting terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with Canadian generally accepted accounting principles, except where inappropriate in the context in which such accounting term is used in this Agreement.

#### **5.2 Accounts**

Each Project Owner shall maintain all accounts required for the purposes of this Agreement in accordance with the provisions of this Agreement and, to the extent not inconsistent therewith, with Canadian generally accepted accounting principles and guidelines and with good petroleum industry practices.

The Project Owners shall cause the Unit Operator, the Resource Project Operator – EL1093, the Resource Project Operator – PL1005 and the Tariff Administrator to maintain all accounts necessary for the purposes of this Agreement in accordance with the provisions of this Agreement and, to the extent not inconsistent therewith, with Canadian generally accepted accounting principles and guidelines and with good petroleum industry practices.

The Project Owners other than Nalcor Oil shall cause the Resource Project Operator – PL1001 and the GBS Operator to maintain all accounts necessary for the purposes of this Agreement in accordance with the provisions of this Agreement and, to the extent not inconsistent therewith, with Canadian generally accepted accounting principles and guidelines and with good petroleum industry practices.

#### **5.3 Canadian Generally Accepted Accounting Principles and Guidelines**

Where the handbook, as amended from time to time, published by the Canadian Institute of Chartered Accountants includes a relevant statement of a principle or guideline of accounting, such statement shall be the generally accepted accounting principle or guideline applicable at the time to the circumstances that it addresses, except where the principle or guideline is not consistent with the provisions of this Agreement.

#### **5.4 Consistent Application**

The accounting terms, principles, guidelines and practices initially adopted by each of:

- (a) a Project Owner;
- (b) a Resource Project Operator;
- (c) the Unit Operator;
- (d) the GBS Operator;

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- (e) the Tariff Administrator;
- (f) a Tanker Administrator;
- (g) the Tanker Cost Aggregator; and
- (h) the Transshipment Operator

for the purposes of this Agreement shall, subject to the foregoing provisions of this Article, be applied on a consistent basis by it from Period to Period and shall not be changed for the purposes of this Agreement unless agreed to by the Province, such agreement not to be unreasonably withheld.

#### **5.5 No Double Counting**

- (a) A cost or revenue or part of a cost or revenue that has been claimed, deducted or included by a Project Owner or the Province in the calculation of Royalty Share PL1001 or Royalty Share EL1093/PL1005 cannot be claimed, deducted or included by that Project Owner, another Project Owner or the Province in a calculation of Royalty Share PL1001 or Royalty Share EL1093/PL1005, as the case may be, or in a calculation of royalty payable in respect of an area other than PL1001, EL1093 or PL1005.
- (b) A cost or revenue or part of a cost or revenue that has been allocated to a Project Owner for purposes of this Agreement cannot be allocated to another Project Owner for purposes of this Agreement.

#### **5.6 Translation of Currency**

- (a) Any amounts received or paid by a Project Owner, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator in other than Canadian Dollars shall be converted into Canadian Dollars when received or paid, as the case may be, in accordance with Canadian generally accepted accounting principles or in accordance with any agreement amongst the Project Owners and the Province that may be made in that regard.
- (b) Notwithstanding subclause 5.6(a), any amounts received or paid by a Project Owner pursuant to the Tariff Agreement other than in Canadian Dollars shall be converted by the Project Owner into Canadian Dollars in accordance with the foreign exchange policy of the Tariff Administrator.

### **ARTICLE 6 ADMINISTRATION OF AGREEMENT**

#### **6.1 Separate Treatment**

The Province shall deal separately with each Project Owner and Licensee in the administration of this Agreement. The actions taken or not taken, any waivers granted or any benefits or indulgences conferred by the Province with respect to any one Project Owner or Licensee shall not prejudice or limit the Province in its dealings with another Project Owner or Licensee with respect to any similar matter or any other matter whatsoever.

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## **6.2 Consistent Treatment**

Notwithstanding the provisions of clause 6.1, the Province shall, in similar circumstances, afford similar treatment to each Project Owner and Licensee to that afforded to another Project Owner or Licensee, as the case may be.

Notwithstanding the foregoing, the Province and Nalcor Oil may enter into an agreement in relation to Nalcor Oil's obligations under this Agreement. If such an agreement is entered into, no other Project Owner or Licensee shall be liable to the Province for any of Nalcor Oil's obligations which, absent such agreement, would have been payable by Nalcor Oil under this Agreement. Further, such agreement shall not affect any determination, calculation, or allocation made under this Agreement.

## **6.3 Interpretation**

It is the intention and agreement of all parties hereto that this Agreement is to be interpreted and enforced independently without reference to any other agreement, with the exception that for those specific clauses of this Agreement which reference the Royalty Agreement, the Unit Agreement, or the Tariff Agreement, such specific clauses are to be interpreted with reference to such other agreement.

# **ARTICLE 7**

## **EFFECTIVE TIME AND TERM**

### **7.1 Effective Time**

This Agreement shall become effective upon the date hereof.

### **7.2 Term**

This Agreement shall remain in force in respect of a Project Owner until termination of all Royalty Agreements in respect of that Project Owner.

### **7.3 Continuation of Agreement**

In the event that this Agreement is terminated with respect to a Project Owner, this Agreement shall continue in effect with respect to all other Project Owners.

# **ARTICLE 8**

## **PARTNERSHIPS**

### **8.1 Liability of Partners**

Each of the general partners of a party hereto which is a partnership shall be fully liable to the Province for all of the liabilities of the partnership to the Province under this Agreement.

### **8.2 Change in Partnerships**

A change in the nature of the partnership or in the partners, partnership interests or the liability of any of the partners of Chevron Partnership, ExxonMobil Partnership or Petro-Canada Partnership

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shall not be effective so as to either release or diminish the liability at that time to the Province hereunder of that partnership or any Licensee unless the Province agrees thereto in writing.

### **8.3 Successor Partnerships**

In the event that there is a change in the partners of, or any other change relative to, ExxonMobil Partnership, Chevron Partnership or Petro-Canada Partnership which would at law result in the termination or reconstitution of any such partnership, then:

- (a) the successor partnership shall be bound by the provisions of this Agreement and shall have all of the rights and obligations under this Agreement of its predecessor partnership; and
- (b) each of ExxonMobil, Chevron and Suncor agrees that it shall not be released from its liabilities and obligations under this Agreement with respect to the predecessor partnership and, further, agrees that it shall be as liable and have the same obligations under this Agreement with respect to its successor partnership as it has under this Agreement with respect to its predecessor partnership.

## **ARTICLE 9 LICENSEES**

### **9.1 ExxonMobil Liability for ExxonMobil Partnership**

ExxonMobil is a general partner in the ExxonMobil Partnership. Notwithstanding any other provision hereof or that ExxonMobil may cease to be a general partner in the ExxonMobil Partnership, ExxonMobil shall be fully and absolutely liable to the Province for all obligations of the ExxonMobil Partnership to the Province under this Agreement until the Province may agree otherwise.

### **9.2 No Reduction of ExxonMobil Liability**

ExxonMobil, ExxonMobil Partnership and the Province acknowledge that, as a result of the requirements of the Federal Accord Act, ExxonMobil must be the Person(s) named in PL1001, PL1005 and in the future significant discovery licence or production licence issued in substitution for EL1093 but ExxonMobil holds all such interests for and on behalf of the ExxonMobil Partnership. The Province may grant time, renewals, extensions, indulgences, releases, discharges and otherwise deal with ExxonMobil Partnership without in any way limiting or lessening the liability of ExxonMobil under this Agreement except to the extent that it results in any reduction of the liability of ExxonMobil Partnership and, thus, ExxonMobil. The Province shall not be bound to exhaust its recourse against ExxonMobil Partnership before being entitled to payment hereunder from ExxonMobil. The obligations of ExxonMobil under this Agreement shall not be terminated, limited or lessened by the termination of the existence of ExxonMobil Partnership. ExxonMobil shall be bound by each account settled between ExxonMobil Partnership and the Province.

### **9.3 Chevron Liability for Chevron Partnership**

Chevron is a general partner in the Chevron Partnership. Notwithstanding any other provision hereof or that Chevron may cease to be a general partner in the Chevron Partnership, Chevron shall be fully and absolutely liable to the Province for all obligations of the Chevron Partnership to the Province under this Agreement until the Province may agree otherwise.

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#### **9.4 No Reduction of Chevron Liability**

Chevron, Chevron Partnership and the Province acknowledge that, as a result of the requirements of the Federal Accord Act, Chevron must be the Person named in PL1001, PL1005 and EL1093 but Chevron holds all such interests for and on behalf of the Chevron Partnership. The Province may grant time, renewals, extensions, indulgences, releases, discharges and otherwise deal with Chevron Partnership without in any way limiting or lessening the liability of Chevron under this Agreement except to the extent that it results in any reduction of the liability of Chevron Partnership and, thus, Chevron. The Province shall not be bound to exhaust its recourse against Chevron Partnership before being entitled to payment hereunder from Chevron. The obligations of Chevron under this Agreement shall not be terminated, limited or lessened by the termination of the existence of Chevron Partnership. Chevron shall be bound by each account settled between Chevron Partnership and the Province.

#### **9.5 Suncor Liability for Petro-Canada Partnership**

Suncor is a general partner in the Petro-Canada Partnership. Notwithstanding any other provision hereof or that Suncor may cease to be a general partner in the Petro-Canada Partnership, Suncor shall be fully and absolutely liable to the Province for all obligations of the Petro-Canada Partnership to the Province under this Agreement until the Province may agree otherwise.

#### **9.6 No Reduction of Suncor Liability**

Suncor, Petro-Canada Partnership and the Province acknowledge that, as a result of the requirements of the Federal Accord Act, Suncor must be the Person named in PL1001, PL1005 and EL1093 but Suncor holds all such interests for and on behalf of the Petro-Canada Partnership. The Province may grant time, renewals, extensions, indulgences, releases, discharges and otherwise deal with Petro-Canada Partnership without in any way limiting or lessening the liability of Suncor under this Agreement except to the extent that it results in any reduction of the liability of Petro-Canada Partnership and, thus, Suncor. The Province shall not be bound to exhaust its recourse against Petro-Canada Partnership before being entitled to payment hereunder from Suncor. The obligations of Suncor under this Agreement shall not be terminated, limited or lessened by the termination of the existence of Petro-Canada Partnership. Suncor shall be bound by each account settled between Petro-Canada Partnership and the Province.

### **ARTICLE 10 REPLACEMENT OF THIRD PARTIES**

#### **10.1 Activities and Replacement of the Unit Operator**

The Project Owners shall cause the Unit Operator to have and maintain an office in Newfoundland and Labrador, which office shall have appropriate levels of staffing and decision making.

The Project Owners shall give the Province thirty (30) days advance notice of the effective date of the resignation or replacement of the Unit Operator and such information relative to the new Unit Operator as the Project Owners consider the Province should require and such other information with respect to the resignation or replacement as the Province may reasonably request.

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## **10.2 Activities and Replacement of the GBS Operator or the Tariff Administrator**

With the exception of infrequent or non-routine activities, the Project Owners shall cause the GBS Operator not to have any business or activities which do not relate to the Resource Project as defined in the PL1001 Royalty Agreement.

Notwithstanding the foregoing, the Project Owners shall cause the GBS Operator to perform the activities necessary to explore, develop, process and produce Hibernia Blend from PL1001, PL1005 and EL1093.

The Project Owners shall give the Province thirty (30) days advance notice of the effective date of the resignation or replacement of the GBS Operator or the Tariff Administrator and such information relative to the new GBS Operator or new Tariff Administrator as the Project Owners consider the Province should require and such other information with respect to the resignation or replacement as the Province may reasonably request.

## **10.3 Replacement of a Tanker Administrator, the Tanker Cost Aggregator or the Transshipment Operator**

The Project Owners shall give the Province thirty (30) days advance notice of the effective date of the resignation or replacement of a Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator and such information relative to the new Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator as the Project Owners consider the Province should require and such other information with respect to the resignation or replacement as the Province may reasonably request. After the date hereof, the Project Owners shall not appoint, designate or engage a Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator unless such Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator has executed and delivered to the Province an Acknowledgement Agreement in the form appended as Schedule A to this Agreement

# **ARTICLE 11**

## **COMPLIANCE WITH AGREEMENT**

### **11.1 Compliance with the Agreement by Resource Project Operators**

Contemporaneously with the execution of this Agreement, the Province and each Resource Project Operator have entered into an Acknowledgement Agreement.

The Project Owners shall cause the Resource Project Operator – EL1093 and the Resource Project Operator – PL1005 and any successor to either of them to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

The Project Owners other than Nalcor Oil shall cause the Resource Project Operator – PL1001 and any successor to either of them to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

### **11.2 Compliance with the Agreement by Unit Operator**

Contemporaneously with the execution of this Agreement, the Province and the Unit Operator have entered into an Acknowledgement Agreement. The Project Owners shall cause the Unit Operator and any successor thereto to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

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### 11.3 Compliance with the Agreement by GBS Operator

Contemporaneously with the execution of this Agreement, the Province and the GBS Operator have entered into an Acknowledgement Agreement. The Project Owners other than Nalcor Oil shall cause the GBS Operator and any successor thereto to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

#### 11.4 Compliance with the Agreement by Tariff Administrator

Contemporaneously with the execution of this Agreement, the Province and the Tariff Administrator have entered into an Acknowledgement Agreement. The Project Owners shall cause the Tariff Administrator and any successor thereto to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

## 11.5 Compliance with the Agreement by Tanker Administrators

Contemporaneously with the execution of this Agreement, the Province and each Tanker Administrator have entered into an Acknowledgement Agreement. The Project Owners shall cause each Tanker Administrator and any successor thereto to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

## 11.6 Compliance with the Agreement by the Tanker Cost Aggregator

The Parties acknowledge that for the period from July 1, 2009 until the appointment of a Tanker Cost Aggregator in accordance with the terms of this Agreement, the duties and obligations of such Tanker Cost Aggregator shall be fulfilled by the **“Interim Tanker Cost Compiler”**. Following the appointment of a Tanker Cost Aggregator, the Project Owners shall cause the Tanker Cost Aggregator and any successor thereto to at all times comply with the provisions of the Acknowledgement Agreement to which it is a party.

## 11.7 Compliance with the Agreement by Transshipment Operator

The Project Owners shall exercise any and all contractual or shareholder rights and remedies available to such Project Owners to cause the Transshipment Operator to execute an Acknowledgement Agreement with the Province.

## 11.8 Compliance Person Breach

With respect to any failure or refusal of a Resource Project Operator, the Unit Operator, the GBS Operator, the Tariff Administrator, a Tanker Administrator, the Tanker Cost Aggregator, or the Transshipment Operator (each referred to as a “**Compliance Person**”) to comply with any of the provisions of this Agreement to which a Project Owner or Project Owners (the “**Responsible Project Owners**”) are required to have them comply or with any of the provisions of the Acknowledgement Agreement to which it is a party, then upon:

- (a) notice by the Province to the Project Owners; or
- (b) the Project Owners otherwise becoming aware,

of any such failure or refusal, such Responsible Project Owners shall enforce their contractual rights and remedies for the benefit of the Province to cause such Compliance Person to comply with any such provisions of this Agreement or such Acknowledgement Agreement.

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## **ARTICLE 12** **RIGHTS AND OBLIGATIONS OF PROJECT OWNERS AND LICENSEES**

### **12.1 Project Owners**

To the extent that this Agreement imposes a separate liability upon a Project Owner to perform a duty or obligation, or creates a separate right, under or pursuant to this Agreement, then only that Project Owner, and no other Project Owner, shall be liable for the performance of such duty or obligation, or entitled to such right. To the extent that this Agreement imposes a collective liability upon more than one Project Owner to perform a duty or obligation under or pursuant to this Agreement, then each Project Owner upon whom such duty or obligation is imposed shall be liable for the performance of such duty or obligation but no Project Owner shall be liable for the non-performance by any other Project Owner of such collective obligation. Subject to the foregoing, nothing in this Agreement or, to the extent variable by agreement, any applicable laws shall create, or be construed as creating, any joint, joint and several or collective rights or obligations on the part of the Project Owners.

### **12.2 Licensees**

To the extent that this Agreement imposes a separate liability upon each Licensee to perform a duty or obligation, or creates a separate right, under or pursuant to this Agreement, then only that Licensee, and no other Licensee, shall be liable for the performance of such duty or obligation, or entitled to such right. Subject to the foregoing, nothing in this Agreement or, to the extent variable by agreement, any applicable laws shall create, or be construed as creating, any joint, joint and several or collective rights or obligations on the part of a Licensee except in respect of the Project Owner of which the Licensee is a partner and any successor partnership as provided for in clause 8.3.

## **ARTICLE 13** **REPRESENTATIONS**

### **13.1 Partnerships**

Each of ExxonMobil Partnership, Chevron Partnership and Petro-Canada Partnership hereby severally covenants, represents and warrants with and to the Province as to itself only, and each of ExxonMobil, Chevron and Suncor hereby severally covenants, represents and warrants with and to the Province with respect to only the Project Owner of which it is a partner, that:

- (a) It is a general partnership constituted and existing under the laws of the Province of Alberta and it is qualified to carry on business in Newfoundland and Labrador and the Offshore Area;
- (b) Each of its partners has the requisite power, authority and qualification to be a partner in the partnership; and
- (c) It, and each of its partners, have all requisite power and authority to enter into this Agreement and to perform its obligations under this Agreement and it has duly executed and delivered this Agreement.

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### **13.2 Corporations**

Each of ExxonMobil, ExxonMobil Hibernia, Chevron, Suncor, Murphy Oil, CHHC, Statoil and Nalcor Oil hereby severally covenants, represents and warrants with and to the Province as to itself only that:

- (a) It is a corporation in good standing under the laws of its jurisdiction of incorporation and is qualified to carry on business in Newfoundland and Labrador and the Offshore Area; and
- (b) It has all requisite power and authority to enter into this Agreement and to perform its obligations under this Agreement and has duly executed and delivered this Agreement.

### **13.3 Province**

The Province hereby covenants, represents and warrants with and to each of the other parties hereto that:

- (a) It has all requisite power and authority to enter into this Agreement and, subject to the general requirement to obtain appropriations, to perform its obligations in accordance with the terms of this Agreement and it has duly executed and delivered this Agreement.

## **ARTICLE 14**

### **PROJECT OWNER'S AGREEMENTS**

#### **14.1 Unit Operating Agreement**

Contemporaneously with the execution of this Agreement by the Province, the Project Owners have delivered to the Province an originally executed copy or a notarially certified copy of the entire Unit Operating Agreement on the date hereof. The Project Owners shall deliver to the Province an originally executed copy or a notarially certified copy of all agreements and other documents which amend, replace or alter howsoever the provisions of the Unit Operating Agreement or the rights or obligations under such agreements of the Persons bound or affected thereby. With the exception of clauses 14.2 and 14.3, this clause shall not require the Project Owners to deliver to the Province any agreements or documents which are contemplated by, which implement, which give effect to or which allow for or reflect the occurrence or performance of matters provided for in the Unit Operating Agreement and which do not amend, replace or alter the provisions of the Unit Operating Agreement.

#### **14.2 Amendment of No Effect**

No amendment, replacement or other alteration whatsoever of the provisions of the Unit Operating Agreement as set out in Schedule H shall be effective for the purposes of this Agreement or the Royalty Agreements until the Province consents thereto in writing, such consent not to be unreasonably withheld.

#### **14.3 Tariff Agreement**

Contemporaneously with the execution of this Agreement by the Province, the Project Owners have delivered to the Province an originally executed copy or a notarially certified copy of the entire Tariff Agreement on the date hereof. The Tariff Agreement shall not be amended, replaced or otherwise altered until the Province consents thereto in writing.

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## ARTICLE 15 RECORDS AND AUDITS

### 15.1 Resource Project Operators' Accounts

The Project Owners in respect of a licence shall cause the Resource Project Operator in respect of that licence to maintain in Newfoundland and Labrador separate accounts recording all costs and charges relating to the production of Hibernia Blend pursuant to that licence. Such Project Owners shall also cause each such Resource Project Operator to maintain in Newfoundland and Labrador such accounting, financial and any other reporting systems as are necessary for the purposes of this Agreement.

### 15.2 Unit Operator's Accounts

The Project Owners shall cause the Unit Operator to maintain in Newfoundland and Labrador the Unit Account. The Project Owners shall cause the Unit Operator, on behalf of the Project Owners, to maintain in Newfoundland and Labrador separate accounts recording all Unit Costs and Unit Incidental Revenue. The Project Owners shall also cause the Unit Operator to maintain in Newfoundland and Labrador such accounting, financial and any other reporting systems as are necessary for the purposes of this Agreement.

The Project Owners shall cause the Unit Operator to determine, as it relates to the Unit, the Resource Project Eligible Costs in accordance with the PL1001 Royalty Agreement and the Resource Project Eligible Costs in accordance with the EL1093/PL1005 Royalty Agreement, as applicable.

The Project Owners shall cause the Unit Operator to determine the Unit Incidental Revenue relating to the operations of the Unit.

### 15.3 Tariff Administrator's Accounts

The Project Owners shall cause the Tariff Administrator to maintain in Newfoundland and Labrador separate accounts recording all amounts collected and disbursed pursuant to the Tariff Agreement. The Project Owners shall also cause the Tariff Administrator to maintain in Newfoundland and Labrador such accounting, financial and any other reporting systems as are necessary for the purposes of this Agreement.

### 15.4 Annual Information

- (a) Unit Operator and Tariff Administrator. Each Project Owner shall provide or cause the Unit Operator and the Tariff Administrator to provide to the Province, in the form prescribed by the Province after consultation with the Project Owners, not later than one hundred and twenty (120) days after the end of each Period, such information as the Province may reasonably prescribe for the purposes of this Agreement.
- (b) Resource Project Operator. The Project Owners in a licence shall cause that licence's Resource Project Operator to provide to the Province in the form prescribed by the Province after consultation with the Project Owners, not later than one hundred and twenty (120) days after the end of each Period, such information as the Province may reasonably prescribe for the purposes of this Agreement.
- (c) GBS Operator. Each Project Owner shall provide or cause the GBS Operator to provide to the Province, in the form prescribed by the Province after consultation with the Project Owners, not later than one hundred and twenty (120) days after the end of each Period, such information as the Province may reasonably prescribe for the purposes of this Agreement.

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Owners, not later than one hundred and twenty (120) days after the end of each Period, the information with respect to production allocations that is contemplated in Article 17.

### **15.5 Annual Forecast**

Not fewer than thirty (30) days before the beginning of a Period, each Project Owner shall submit to the Province in the form prescribed by the Province:

- (a) an annual forecast of Resource Project Eligible Costs, Eligible Transportation Costs, Tariffs and production by Royalty Area for the subsequent Period; and
- (b) an estimate of when Net Royalty Payout PL1001, Net Royalty Payout EL1093/PL1005, Supplementary Royalty Payout PL1001 and Supplementary Royalty Payout EL1093/PL1005 is expected to occur in each of PL1001, PL1005 and EL1093, as applicable for the subsequent Period, such estimates to be based on Crude Oil prices provided by the Province.

### **15.6 Monthly Information**

- (a) Unit Operator and Tariff Administrator. Each Project Owner shall provide or cause the Unit Operator and the Tariff Administrator to provide to the Province, before the end of each Month, in the form prescribed by the Province after consultation with the Project Owners, information reasonably required by the Province for the purposes of this Agreement.
- (b) Resource Project Operator. The Project Owners in a licence shall cause that licence's Resource Project Operator to provide to the Province, before the end of each Month, in the form prescribed by the Province after consultation with the Project Owners, information reasonably required by the Province for the purposes of this Agreement.
- (c) GBS Operator. Each Project Owner shall provide or cause the GBS Operator to provide to the Province, in the form prescribed by the Province, before the end of each Month, in the form prescribed by the Province after consultation with the Project Owners, information reasonably required by the Province for the purposes of this Agreement.

### **15.7 Artificial Transactions**

Where, in the opinion of the Province, the result of an act, agreement, allocation, arrangement, transaction or operation artificially or unduly reduces the amount of Royalty Share PL1001 or Royalty Share EL1093/PL1005, such royalty share shall be calculated as if the act, agreement, allocation, arrangement, transaction or operation had not occurred or had occurred at fair market value between parties dealing at arm's length. If a Project Owner disagrees with a calculation and the disagreement is not resolved by discussions with the Province, the calculation may be submitted to arbitration in order to determine the extent, if any, by which such royalty share or value thereof has been artificially reduced by the act, agreement, allocation, arrangement, transaction or operation and royalty share or value thereof will be adjusted accordingly.

### **15.8 Audits and Inspections**

The Province shall have the right from time to time to inspect or audit all books, records and accounts and any document, as well as the right to inspect inventories and assets, of any Resource Project Operator, Unit Operator, GBS Operator and Tariff Administrator in order to verify information that may affect calculations under this Agreement or the Royalty Agreements. The Province shall, upon reasonable notice have the right to enter, during normal business hours, upon any premises or place where the business of any Resource Project Operator, Unit Operator, GBS Operator or Tariff

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Administrator is carried on or where any such records, books, documents, inventories or assets are maintained, except that the Province may conduct cash and inventory audits of any Resource Project Operator, Unit Operator and GBS Operator without notice.

A Resource Project Operator, the Unit Operator, the GBS Operator and the Tariff Administrator shall be allowed a reasonable period of time to produce documents requested by the Province in the course of an audit. Requests for documents on behalf of the Province shall be in sufficient detail for a Resource Project Operator, the Unit Operator, the GBS Operator or the Tariff Administrator to identify the documents requested. The Project Owners shall cooperate and cause any Resource Project Operator, Unit Operator, Tariff Administrator and the GBS Operator to cooperate in any audits and inspections permitted by this Agreement or the Royalty Agreements. Audits undertaken by the Province shall be conducted within the Audit Period. Subject to clause 15.9, the cost of audits performed by the Province or its authorized agent shall be at the sole cost of the Province.

### **15.9 Audit Upon Nonfiling**

In the event that a Project Owner does not file or cause to be filed with the Province the monthly information referred to in clause 15.6 or clause 21.1 of Schedule E or the annual information referred to in clause 15.4 within the time provided, then the Province may give the Project Owner notice of such failure to file. In the event that a Project Owner does not within fifteen (15) days of the receipt of such notice file or cause to be filed such monthly information or annual information to which the notice relates, then the Project Owners shall make such estimate in respect of such monthly information or annual information to which the notice relates as is reasonable in the circumstances and such estimate shall be used for the calculation of Royalty Share PL1001 or Royalty Share EL1093/PL1005. If the Project Owner fails to provide such estimate or where the Province is of the view that such estimate is not reasonable in the circumstances, the Province may substitute therefor a reasonable estimate as established by the Province for the calculation of Royalty Share PL1001 or Royalty Share EL1093/PL1005.

After such estimate has been provided to the relevant Project Owners, the Province may conduct such audit of the records of the applicable Project Owner, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator and Transshipment Operator as is necessary to determine such monthly information or annual information to which the notice relates and the cost of the audit shall be added to the amount, if any, determined by the Province to be owing by the Project Owner to the Province.

Upon completion of an estimate or an audit by the Province pursuant to this clause and notification to the Project Owner of the amount payable by the Project Owner to the Province, the Project Owner shall forthwith pay to the Province any amount of Royalty Share PL1001 or Royalty Share EL1093/PL1005 so determined by the Province to be payable by the Project Owner to the Province.

### **15.10 Preservation of Records**

Each Project Owner shall, and shall cause each Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator and Transshipment Operator to maintain and preserve each document necessary for the purposes of this Agreement or the Royalty Agreements until the end of the Audit Period applicable to such document.

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### **15.11 Access and Seizure**

Where the Province has reasonable grounds for believing that a Project Owner, a Resource Project Operator, the Unit Operator, the GBS Operator or a Tariff Administrator is not providing or is not causing to be provided information or access in accordance with the requirements of this Agreement, the Project Owners agree, and each of the Resource Project Operators, the Unit Operator, the GBS Operator and the Tariff Administrators agree pursuant to the Acknowledgement Agreement to which it is a party, that the Province may, upon an order of the Trial Division of the Supreme Court of Newfoundland and Labrador or a Justice thereof granted upon ex parte application by the Province:

- (a) enter at all reasonable times into any place where there is conducted the business of a Project Owner, a Resource Project Operator, the Unit Operator, the GBS Operator or the Tariff Administrator required to keep records under this Agreement;
- (b) examine or seize and take away any record of a Project Owner, a Resource Project Operator, the Unit Operator, the GBS Operator or the Tariff Administrator required to be kept under this Agreement;
- (c) examine or seize and take away any record which will assist in determining the accuracy of the calculations to be made pursuant to and the records that are required to be kept under this Agreement; and
- (d) require a Project Owner, a Resource Project Operator, the Unit Operator, the GBS Operator or the Tariff Administrator to give the Province or person authorized by the Province all reasonable assistance in carrying out the functions under this clause.

The Province shall forthwith provide a detailed list of all documents seized by the Province to the Person from whom the documents were seized. The Province shall allow access to all and any documents seized by the Province to the representatives of the Person with respect to whom the documents were seized. Any reproduction of seized documents shall be at the expense of whomsoever does the reproduction. The Province shall return all original documents to the Person from whom the documents were seized as soon as copies have been made and certified and no later than thirty (30) days from the date of seizure.

### **15.12 Certified Copies**

The parties hereto agree that, notwithstanding any rule of law or evidence to the contrary, any such rule being hereby waived to the fullest extent that it may effectively be done, by all parties hereto, a photocopy or other copy of a document seized by the Province from a Project Owner, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator and purporting to be certified by the person authorized by the Province to be responsible for the seized documents as a copy of the document seized shall be admissible in evidence in any arbitration, administrative or judicial proceeding and shall be, in the absence of evidence to the contrary, proof of the contents of the document without proof of the certifying person's signature or appointment or of his responsibility for custody of the document.

### **15.13 Legislative and Regulatory Action**

The Province may take such legislative and regulatory action as the Province considers appropriate to implement the provisions of clauses 15.14 and 15.15 and to allow the provisions of clauses 15.14 and 15.15 to be enforced by the Supreme Court of Newfoundland and Labrador upon ex parte application by the Province.

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#### **15.14 Rights in Other Jurisdictions**

The Province shall have the same rights with respect to records, access to premises, examination and seizure in jurisdictions other than the Province as it has under clause 15.15. Each Project Owner hereby waives all notice to it and its counsel of and consents to any application being made ex parte by the Province in the courts of any jurisdiction to enforce in such jurisdiction the rights that it would have were proceedings taken with respect to the Province under clause 15.15.

#### **15.15 Non-Availability of Records**

In the event that documents which a Project Owner, Resource Project Operator, Unit Operator, GBS Operator or Tariff Administrator are required to make available to the Province cannot be made available to the Province because the documents have been validly seized by another Person, the failure to make such documents available to the Province shall not constitute a breach of or default under this Agreement by the Project Owner or a breach of or default under the undertakings given by each Resource Project Operator, Unit Operator, GBS Operator or Tariff Administrator pursuant to Article 11. Each Project Owner shall, and shall cause the Resource Project Operator-PL1005, Resource Project Operator-EL1093, Unit Operator, GBS Operator or Tariff Administrator, to use all reasonable efforts to assist the Province in gaining access to any document seized by another Person while in the possession of the other Person. Each Project Owner other than Nalcor Oil shall cause the Resource Project Operator-PL1001 to use all reasonable efforts to assist the Province in gaining access to any document seized by another Person while in the possession of the other Person.

#### **15.16 Confidentiality**

Subject to the requirements of the *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, the Province shall at all times keep confidential all information obtained from any Project Owner, Licensee, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator. These confidentiality requirements shall not apply to any information which:

- (a) is required to be produced in court or pursuant to an arbitration hereunder to enforce the provisions of this Agreement;
- (b) is in the public domain at the time it is obtained by the Province through no wrongful act of the Province;
- (c) becomes in the public domain after it has been obtained through no fault of the Province;
- (d) is otherwise in the possession of the Province prior to the time it is obtained from any Project Owner, Licensee, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator through no wrongful act of the Province and is not then held in confidence;
- (e) relates to any Project Owner, Licensee, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator and is obtained by the Province from any Person not known to the Province to be obligated to keep the information obtained by the Province confidential;
- (f) the Province is required to disclose by law, by any court having jurisdiction or by any body constituted by law which has been authorized by law to require such disclosure, but in each case only to the extent so requested and required; or
- (g) is disclosed to Canada.

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Notwithstanding the foregoing, the Province may disclose, upon the same conditions as are applicable to the Province under this clause, any information obtained from any Project Owner, Licensee, Resource Project Operator, Unit Operator, GBS Operator, Tariff Administrator, Tanker Administrator, Tanker Cost Aggregator or Transshipment Operator to any servant of and advisor to the Province for the purposes only of this Agreement provided that, with respect to any information relating to the pricing of Crude Oil or relating to contracts for the sale of Hibernia Blend of a Project Owner, such information and contracts may only be disclosed for the purposes of items 15.16(a) or (f), for the purposes of administering this Agreement.

## **ARTICLE 16** **GENERAL ALLOCATION PRINCIPLES**

### **16.1 General Allocation Principles**

- (a) All production of Hibernia Blend shall be allocated to one of the following Royalty Areas:
  - (i) PL1001 Balance Royalty Area;
  - (ii) PL1001 AA Blocks Royalty Area;
  - (iii) PL1001 Southern Royalty Area; or
  - (iv) EL1093/PL1005 Royalty Area,
    - in accordance with the provisions set out in this Agreement.
- (b) All costs shall be allocated to one of the following licences:
  - (i) PL1001;
  - (i) PL1005; or
  - (ii) EL1093,
    - in accordance with the provisions set out in this Agreement.
- (c) All sales volumes of Hibernia Blend shall be allocated to one of the following Royalty Areas:
  - (i) PL1001 Balance Royalty Area;
  - (ii) PL1001 AA Blocks Royalty Area;
  - (iii) PL1001 Southern Royalty Area; or
  - (iv) EL1093/PL1005 Royalty Area,
    - in accordance with the provisions set out in this Agreement.
- (d) All revenue shall be allocated to:
  - (i) PL1001; or
  - (ii) EL1093/PL1005,
    - in accordance with the provisions set out in this Agreement.
- (e) All costs other than Eligible Transportation Costs and Tariffs allocated to PL1001, PL1005 or EL1093 under this Agreement are subject to the eligibility and qualification criteria set out in the PL1001 Royalty Agreement or the EL1093/PL1005 Royalty Agreement, as applicable.
- (f) In the event the Project Owners or any of them wish to produce Crude Oil from an area other than a Royalty Area, the Project Owners agree that production from that area shall

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not commence until the Projects Owners and the Province have amended this Agreement or otherwise agreed to provide for an allocation of such production, sales revenue and related costs.

## ARTICLE 17 PRODUCTION ALLOCATIONS

### 17.1 Production Areas

The total production of Hibernia Blend shall be allocated among the following production areas pursuant to clauses 17.2 and 17.3:

(a) Unit Production Areas:

- (i) PL1001 Unit Southern Equity Area;
- (ii) PL1001 Unit Balance Area;
- (iii) PL1001 Unit AA Blocks Southern Secondary Reservoir Area;
- (iv) PL1005 Unit Area; and
- (v) EL1093 Unit Area

(each individually referred to as a "Unit Production Area" and collectively as the "Unit Production Areas").

(b) Non-Unit Production Areas:

- (i) PL1001 Non-Unit AA Blocks Main Area;
- (ii) PL1001 Non-Unit AA Blocks Secondary Reservoir Area;
- (iii) PL1001 Non-Unit Southern Equity Area;
- (iv) PL1001 Non-Unit Balance Area;
- (v) PL1001 Non-Unit Southern Non-Equity BNA Area;
- (vi) PL1005 Non-Unit Area; and
- (vii) EL1093 Non-Unit Area

(each individually referred to as a "Non-Unit Production Area" and collectively as the "Non-Unit Production Areas").

### 17.2 Measurement and Allocation

(a) In each Month, the GBS Operator shall measure and allocate the production of Hibernia Blend as follows:

- (i) to the Unit Production Areas; and
- (ii) to each Non-Unit Production Area,

on a well-by-well basis in accordance with metered values where practicable or, where not practicable, in accordance with the Flow System and Allocation Procedure provided, however, that with respect to any Block that is partially contained within PL1001 Non-Unit Balance Area and partially contained within:

- (A) PL1001 Non-Unit AA Blocks Secondary Reservoir Area, or
- (B) PL1001 Non-Unit Southern Non-Equity BNA Area,

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any Hibernia Blend produced from such Block shall be allocated between PL1001 Non-Unit Balance Area and PL1001 Non-Unit AA Blocks Secondary Reservoir Area or PL1001 Non-Unit Southern Non-Equity BNA Area in proportion to the economically recoverable reserves allocable to each such area as determined by the Resource Project Operator-PL1001 in accordance with good oilfield practice. The Resource Project Operator-PL1001 shall notify the Province of its determination of the economically recoverable reserves allocable to each such area. If, within thirty (30) days of receipt of notice from the Resource Project Operator-PL1001, the Province has not advised the Resource Project Operator-PL1001 of its acceptance of such determination or provided an alternative reasonable allocation of economically recoverable reserves between such areas, then the Province shall be deemed to have approved the determination made by the Resource Project Operator-PL1001. If the Province provides the Resource Project Operator-PL1001 with an alternative allocation of economically recoverable reserves between such areas within the thirty (30) day period provided above, then: (i) if the Resource Project Operator-PL1001 accepts such allocation, such allocation shall be used for the purposes of allocating production between such areas; or (ii) if, following discussion between the Resource Project Operator-PL1001 and the Province, the Resource Project Operator-PL1001 does not accept such allocation and the Resource Project Operator-PL1001 and the Province are unable to agree on a mutually acceptable allocation, then the Resource Project Operator-PL1001 may proceed with the development of the applicable Block and the allocation of economically recoverable reserves between such areas may be submitted to arbitration under this Agreement.

(b) In each Month, the GBS Operator shall report the allocation of:

- (i) Unit Production to the Unit Production Areas to the Unit Operator;
- (ii) production to the PL1001 Non-Unit Area to the Resource Project Operator - PL1001;
- (iii) production to the PL1005 Non-Unit Area to the Resource Project Operator - PL1005; and
- (iv) production to the EL1093 Non-Unit Area to the Resource Project Operator - EL1093.

### **17.3 Unit Production Areas**

Production allocated to the Unit Production Areas in each Month pursuant to clause 17.2 shall be allocated by the Unit Operator to each Unit Production Area in accordance with the Tract Participation for each such area in effect for such Month.

### **17.4 Project Owner Share of Production**

For each Month, the Unit Operator and each Resource Project Operator shall report the production allocation pursuant to clauses 17.2 and 17.3, as applicable, to the Project Owners based on their respective Working Interest, if any.

For greater certainty, during any rebalancing period contemplated in Subsection 4.4(D) and (E) of Schedule C of the Unit Agreement, the Unit Operator shall adjust such allocation of Unit Production based on the amounts to which each Project Owner is entitled during such rebalancing period.

### **17.5 Aggregation of Production Volumes for Royalty Purposes**

(a) Production allocated to:

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- (i) PL1001 Unit AA Blocks Southern Secondary Reservoir Area;
- (ii) PL1001 Non-Unit AA Blocks Secondary Reservoir Area; and
- (iii) PL1001 Non-Unit AA Blocks Main Area,

as reported for each Month pursuant to clause 17.4 shall be aggregated by each Project Owner and shall be reported as the production from PL1001 AA Blocks Royalty Area for that Project Owner for that Month.

- (b) Production allocated to:

- (i) PL1001 Unit Southern Equity Area;
- (ii) PL1001 Non-Unit Southern Equity Area; and
- (iii) PL1001 Non-Unit Southern Non-Equity BNA Area,

as reported for each Month pursuant to clause 17.4 shall be aggregated by each Project Owner and shall be reported as the production from PL1001 Southern Royalty Area for that Project Owner for that Month.

- (c) Production allocated to:

- (i) PL1001 Non-Unit Balance Area; and
- (ii) PL1001 Unit Balance Area,

as reported for each Month pursuant to clause 17.4 shall be aggregated by each Project Owner and shall be reported as the production from PL1001 Balance Royalty Area for that Project Owner for that Month.

- (d) Production allocated to:

- (i) EL1093 Unit Area;
- (ii) EL1093 Non-Unit Area;
- (iii) PL1005 Unit Area; and
- (iv) PL1005 Non-Unit Area,

as reported for each Month pursuant to clause 17.4 shall be aggregated by each Project Owner and shall be reported as the production from EL1093/PL1005 Royalty Area for that Project Owner for that Month.

## ARTICLE 18 COST ALLOCATIONS

### 18.1 Costs - General

- (a) All costs charged to the Unit Account, the Joint Account – PL1001, Joint Account – EL1093, and the Joint Account – PL1005 in each Month with respect to PL1001, EL1093 and PL1005 shall be allocated among:
  - (v) the Unit Production Areas;
  - (vi) PL1001 Non-Unit Area;
  - (vii) EL1093 Non-Unit Area; and
  - (viii) PL1005 Non-Unit Area,

In accordance with clauses (b) – (e) and clause 18.2.

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- (b) Costs related to operations for the exclusive benefit of the Unit shall be charged to the Unit Account.
- (c) Costs related to operations for the exclusive benefit of PL1001 Non-Unit Area shall be charged to the Joint Account - PL1001.
- (d) Costs related to operations for the exclusive benefit of EL1093 Non-Unit Area shall be charged to Joint Account - EL1093.
- (e) Costs related to operations for the exclusive benefit of PL1005 Non-Unit Area shall be charged to Joint Account - PL1005.

### **18.2 Costs of Common Benefit**

- (a) Operating costs related to operations of common benefit to the Unit Production Areas and the PL1001 Non-Unit Area shall initially be allocated between the Unit Production Areas and the PL1001 Non-Unit Area each Month based on actual shared operating costs in a Month multiplied by the annual forecast ratio of Unit Production to total Hibernia Blend production as estimated by the GBS Operator, as may be amended. At the end of each Period, such allocation between the Unit Production Areas and the PL1001 Non-Unit Area shall be recalculated for each Month as follows:
  - (i) for the Unit Production Areas, by multiplying the actual production for the Unit Production Areas for that Month by:  
$$\frac{\text{Actual shared operating costs for the calendar year for production of Hibernia Blend}}{\text{Actual production of Hibernia Blend in the calendar year}}$$
  - (ii) for the PL1001 Non-Unit Area, by multiplying the actual production for the PL1001 Non-Unit Area for that Month by:  
$$\frac{\text{Actual shared operating costs for the calendar year for production of Hibernia Blend}}{\text{Actual production of Hibernia Blend in the calendar year}}$$
- (b) Capital costs required by the Unit that are of common benefit to the Unit Production Areas and PL1001 Non-Unit Area shall be allocated between the Unit Production Areas and PL1001 Non-Unit Area in proportion to the estimated relative future benefit of the capital costs in relation to each such area, such benefit to be determined based on the remaining economically recoverable Crude Oil reserves in each such area, as determined by the GBS Operator in accordance with good oilfield practice, unless the determination of such benefit is otherwise agreed by the parties hereto, in each case as at the time of such capital costs. The Province shall have the right to audit and redetermine the GBS Operator's estimate of remaining economically recoverable Crude Oil reserves pursuant to this Agreement and the Royalty Agreements.

### **18.3 Unit Costs**

The Unit Operator shall allocate all costs charged to the Unit Account in a Month to each Unit Production Area in accordance with the Tract Participation for each such area in effect for such Month.

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#### **18.4 Unit Resource Project Eligible Costs**

(a) Each Month, the Unit Operator shall determine Resource Project Eligible Costs in accordance with the PL1001 Royalty Agreement for those costs which have been allocated in accordance with clause 18.3 to:

- (i) PL1001 Unit Southern Equity Area;
- (ii) PL1001 Unit Balance Area; and
- (iii) PL1001 Unit AA Blocks Southern Secondary Reservoir Area,

and shall allocate and report such Resource Project Eligible Costs to each Project Owner in accordance with their respective Working Interests (if any) in each such Unit Production Area.

(b) Each Month, the Unit Operator shall determine Resource Project Eligible Costs in accordance with the EL1093/PL1005 Royalty Agreement for those costs which have been allocated in accordance with clause 18.3 to:

- (iv) PL1005 Unit Area; and
- (v) EL1093 Unit Area,

and shall allocate and report such Resource Project Eligible Costs to each Project Owner in accordance with their respective Working Interests (if any) in each such Unit Production Area.

For greater certainty, during any rebalancing period contemplated in Subsection 4.4(D) and (E) of Schedule C of the Unit Agreement, the Unit Operator shall adjust such allocation of costs based on the amount of Unit Production allocated to each Project Owner during such rebalancing period.

#### **18.5 PL1001 Non-Unit Resource Project Eligible Costs**

Each Month, the Resource Project Operator - PL1001 shall determine the Resource Project Eligible Costs in accordance with the PL1001 Royalty Agreement for those costs which have been incurred in respect of PL1001 Non-Unit Area. The Resource Project Operator-PL1001 shall allocate and report such Resource Project Eligible Costs to each Project Owner as follows:

- (a) for the PL1001 Non-Unit Area, excluding the PL1001 Non-Unit Southern Equity Area, in accordance with the Working Interests as set out in clause 16.1(a) of the PL1001 Royalty Agreement;
- (b) for the PL1001 Non-Unit Southern Equity Area in accordance with the Working Interests as set out in clause 16.1(b) of the PL1001 Royalty Agreement.

#### **18.6 EL1093 and PL1005 Non-Unit Resource Project Eligible Costs**

(a) Each Month, the Resource Project Operator - EL1093 shall determine the Resource Project Eligible Costs in accordance with the EL1093/PL1005 Royalty Agreement for those costs which have been incurred in respect of EL1093 Non-Unit Area. The Resource Project Operator - EL1093 shall allocate and report such Resource Project Eligible Costs to each Project Owner in accordance with their respective Working Interests (if any) in EL1093.

(b) Each Month, the Resource Project Operator - PL1005 shall determine the Resource Project Eligible Costs in accordance with the EL1093/PL1005 Royalty Agreement for those costs which have been incurred in respect of PL1005 Non-Unit Area. The Resource Project

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Operator – PL1005 shall allocate and report such Resource Project Eligible Costs to each Project Owner in accordance with their respective Working Interests (if any) in PL1005.

**18.7 Aggregation of Resource Project Eligible Costs for Royalty Purposes**

(a) Resource Project Eligible Costs allocated to:

- (i) PL1001 Unit Southern Equity Area;
- (ii) PL1001 Unit Balance Area;
- (iii) PL1001 Unit AA Blocks Southern Secondary Reservoir Area; and
- (iv) PL1001 Non-Unit Area,

as reported for each Month pursuant to subclause 18.4(a) and clause 18.5 shall be aggregated by each Project Owner and shall be reported as the Resource Project Eligible Costs for that Month for the purposes of calculating Royalty Share – PL1001.

(b) Resource Project Eligible Costs allocated to:

- (i) PL1093 Unit Area;
- (ii) EL1093 Non-Unit Area;
- (iii) PL1005 Unit Area; and
- (iv) PL1005 Non-Unit Area,

as reported for each Month pursuant to subclause 18.4(b) and clause 18.6 shall be aggregated by each Project Owner and shall be reported as the Resource Project Eligible Costs for that Month for the purposes of calculating Royalty Share – EL1093/PL1005.

**18.8 Unit Pre-Development Costs**

(a) Unit pre-development costs incurred in respect of the Unit prior to July 1, 2009 are deemed to be one hundred forty three million three hundred seventy three thousand one hundred sixty three CAD (\$143,373,163.00). Subject to clause 18.8(b), ten percent (10%) of such costs shall be allocated to Nalcor Oil and the remaining ninety percent (90%) of such costs shall be allocated to the Project Owners other than Nalcor Oil in accordance with their respective Working Interests in PL1001. Such costs shall be allocated by each Project Owner to each Unit Production Area as of the time such costs were paid in accordance with the Tract Participation in effect as of July 15, 2009.

(b) Following a reconciliation of costs as contemplated in Section 3.2(G) or Section 3.2(H) of the Unit Agreement:

- (i) with respect to any Project Owner that has made a payment to any other Project Owners pursuant to Section 3.2(G) or Section 3.2(H) of the Unit Agreement, such payment shall be considered to be Unit Pre-Development Costs, exclusive of uplifts, of such Project Owner in the Month in which such payment is made and shall be allocated to the Tracts in which such Project Owner has a Unit Interest *pro rata* in accordance with the Tract Participations in effect for such Month; and
- (ii) with respect to any Project Owner that has received a payment from any other Project Owners pursuant to Section 3.2(G) or Section 3.2(H) of the Unit Agreement, such payment shall be considered to be a reduction of the Unit Pre-Development Costs of such Project Owner in the Month in which such payment is received and shall be

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allocated to the Tracts in which such Project Owner has a Unit Interest *pro rata* in accordance with the Tract Participations in effect for such Month.

- (c) After July 1, 2009 but prior to Sanction (as such term is defined in the EL1093/PL1005 Royalty Agreement), costs charged to the Unit Account during a Month shall be considered to be "**Unit Pre-Development Costs**" and shall be allocated to each Unit Production Area in accordance with the Tract Participation for each such area in effect for such Month.
- (d) Unit Pre-Development Costs allocated to each Unit Production Area shall be allocated to the Project Owners in accordance with their respective Working Interests (if any) in each such Unit Production Area.
- (e) For the purposes of calculating Royalty Share PL1001 the portion of Unit Pre-Development Costs allocated to PL1001 shall, if eligible, be included as Resource Project Eligible Capital Costs in respect of PL1001. For the purposes of calculating Royalty Share EL1093/PL1005 the portion of such costs allocated to EL1093/PL1005 shall, if eligible, be included as Pre-Development Costs in respect of EL1093/PL1005.

#### **18.9 Project Owner Marketing Costs**

For each Month, each Project Owner shall allocate its marketing costs between PL1001 and EL1093/PL1005 in the same proportion as the Hibernia Blend sales volumes for such Project Owner for such Month are allocated between PL1001 and EL1093/PL1005 in accordance with the sales volume allocation provisions as set out under clause 21.2 of this Agreement.

#### **18.10 Project Owner Insurance Costs**

For each Month, each Project Owner shall allocate its insurance costs between PL1001 and EL1093/PL1005 in the same proportion as the Hibernia Blend sales volumes for such Project Owner for such Month are allocated between PL1001 and EL1093/PL1005 in accordance with the sales volume allocation provisions as set out under clause 21.2 of this Agreement, unless otherwise allocated by the Project Owner and approved by the Province.

#### **18.11 Eligible Transportation Costs**

For each Month, Eligible Transportation Costs shall be determined pursuant to Schedule E.

### **ARTICLE 19 UNIT INCIDENTAL REVENUE**

#### **19.1 Unit Incidental Revenue**

Any Unit Incidental Revenue received in a Month shall be allocated to each Unit Production Area in accordance with the Tract Participation for each such area in effect for such Month. All Unit Incidental Revenue allocated to each such Unit Production Area shall be allocated to the Project Owners in accordance with their respective Working Interests (if any) in each such Unit Production Area.

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## ARTICLE 20

### ROYALTY REDETERMINATION ADJUSTMENTS

#### **20.1 Adjustment Statement**

Within seven (7) Days of an Effective Redetermination Date and an Imbalance Adjustment Date, as applicable, the Unit Operator shall provide each Project Owner with a statement and the Province with all statements (the "Royalty Adjustment Statement") showing:

- (a) the Redetermined Tract Participations;
- (b) the aggregated Unit Redetermined Capital Costs incurred by that Project Owner for each Tract up to but not including the Effective Redetermination Date or Imbalance Adjustment Date, as applicable;
- (c) the aggregated Unit Redetermined Capital Costs for each Tract that would have been incurred by that Project Owner based on the Redetermined Tract Participations and resulting Unit Interests up to but not including the Effective Redetermination Date or the Imbalance Adjustment Date, as applicable; and
- (d) for that Project Owner, for each Tract, the difference between the amounts calculated in clauses 20.1(b) and (c) (the "Capital Cost Adjustment").

#### **20.2 Adjustment of Capital Costs**

Each Project Owner shall recognize the Capital Cost Adjustment, as a Resource Project Eligible Capital Cost or a reduction in Resource Project Eligible Capital Costs, as applicable, for each Tract for the purpose of calculating that Project Owner's Royalty Share PL1001 or Royalty Share EL1093/PL1005.

#### **20.3 Calculation of Uplift**

Each Project Owner shall calculate an uplift to the Capital Cost Adjustment for each Tract which is the aggregate of:

- (a) 1% of the Capital Cost Adjustment excluding facility use fees paid pursuant to the Tariff Agreement and Extraordinary Operating Costs; plus
- (b) 10% of the Capital Cost Adjustment relating to Extraordinary Operating Costs.

(the "Uplifts").

#### **20.4 Recalculation of Royalty Payout**

Each Project Owner shall adjust their Net Royalty Payout PL1001, Supplementary Royalty Payout PL1001, Net Royalty Payout EL1093/PL1005 and Supplementary Royalty Payout EL1093/PL1005 as though the capital costs set out in the Capital Cost Adjustment and the Uplifts were paid in the redetermined Tracts on the date such capital costs and uplifts were originally paid.

#### **20.5 Royalty Share Re-Filing**

- (a) Within 60 days of the receipt of a Royalty Adjustment Statement all Project Owners shall provide the Province with a statement setting out the recalculation of Net Royalty Payout PL1001, Net Royalty Payout EL1093/PL1005, Supplementary Royalty Payout PL1001,

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Supplementary Royalty Payout EL1093/PL1005, pursuant to clause 20.4, as at the Month of such statement (the "Royalty Adjustment Re-Filing").

(b) Where the Royalty Adjustment Re-Filing results in an increase in Royalty Share PL1001 or Royalty Share EL1093/PL1005 payable by a Project Owner, such additional amount shall be paid by the Project Owner to the Province on the same day that such Project Owner submits its Royalty Adjustment Re-Filing. Where a Royalty Adjustment Re-Filing results in a refund of Royalty Share PL1001 or Royalty Share EL1093/PL1005 to a Project Owner, such refund shall be paid by the Province within 60 days of the Royalty Adjustment Re-Filing. Payments made by the Province or the Project Owners pursuant to this clause 20.5 shall not be subject to any interest or Penalty under the Royalty Agreements.

#### **20.6 Adjustment of Unit Operating Costs and Tariffs**

(a) Unit Operating Costs (excluding Extraordinary Operating Costs) and net processing fees paid pursuant to the Tariff Agreement will not be adjusted for or included in any Royalty Adjustment Statement.

(b) If there is a rebalancing of Unit Production among the Project Owners pursuant to Schedule C of the Unit Agreement, the Unit Operating Costs and net processing fees paid pursuant to the Tariff Agreement will be paid consistent with entitlements to the rebalanced Unit Production. Any rebalanced Unit Production shall carry with it an equivalent pro-rata share of Unit Operating Costs and net processing fees paid pursuant to the Tariff Agreement and the portion of such costs that meet the eligibility criteria pursuant to the Royalty Agreements shall be a Resource Project Eligible Cost for the Project Owner receiving such rebalancing volumes of Unit Production and shall not be a Resource Project Eligible Cost for that Project Owner providing such rebalanced volumes of Unit Production.

#### **20.7 Cash Settlement**

If, pursuant to Subsection 4.4(J)(1) of Schedule C of the Unit Agreement, there results a payment or receipt of a payment in lieu of rebalancing of Unit Production, such amount shall be recognized as a deduction or addition to Gross Sales Revenue, as applicable, for the purpose of calculating Royalty Share PL1001 and Royalty Share EL1093/PL1005 in the Month in which such statement is received and such adjustments shall be attributed to the Tracts to which such cash settlement relates.

#### **20.8 Audit Period and Royalty Redetermination**

(a) If Royalty Adjustment Re-Filing results in a change in the Royalty Share PL1001 or Royalty Share EL1093/PL1005 for a Period for which the Audit Period has expired, the Province shall have the right to redetermine, within 12 months of the date of such Royalty Adjustment Re-filing, whether such Royalty Adjustment Re-filing was in accordance with the provisions of this Agreement and the Royalty Agreements.

(b) Where the Province is of the view that the Royalty Adjustment Re-filing was not in accordance with the Royalty Adjustment Statement, the Province may redetermine Royalty Share PL1001 and Royalty Share EL1093/PL1005 pursuant to the Royalty Agreements.

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**ARTICLE 21**  
**SALES VOLUME AND GROSS SALES REVENUE ALLOCATIONS**

**21.1 Hibernia Blend Sales Volume Allocation**

Each Project Owner shall determine, in respect of each Month, the volume of Hibernia Blend sold by such Project Owner during such Month that is allocable to each Royalty Area. For the purposes of determining such allocation, each Project Owner shall record and maintain a "Royalty Inventory" accounting for the four Royalty Areas as follows:

- (a) If the opening Royalty Inventory balance for a Month is negative, then:
  - (i) prior to adding production volumes to the opening Royalty Inventory for each Royalty Area for that Month pursuant to subclause 21.1(a)(iii), the negative Royalty Inventory balance shall be restated (in this clause 21.1, the "Restated Royalty Inventory") so that such negative Royalty Inventory balance is allocated among the Royalty Areas in the same proportion as the production of Hibernia Blend is aggregated by such Project Owner for each Royalty Area for such then current Month pursuant to clause 17.5;
  - (ii) the difference (positive or negative) between the opening negative Royalty Inventory for each Royalty Area and the Restated Royalty Inventory for each Royalty Area shall be the "Royalty Inventory Adjustment" for each Royalty Area for the purposes of this clause 21.1;
  - (iii) production volumes aggregated by a Project Owner in each Month for each Royalty Area pursuant to subclause 17.5 shall be added to the Restated Royalty Inventory for each Royalty Area for that Month; and
  - (iv) sales volumes for that Month shall be in proportion to the Royalty Inventory for each Royalty Area calculated pursuant to subclause 21.1(a)(iii) after applying the Royalty Inventory Adjustment for each such Royalty Area for such Month, as applicable.
- (b) If the opening Royalty Inventory balance for a Month is positive, then:
  - (i) such positive opening Royalty Inventory balance shall be deemed to be the Restated Royalty Inventory for such Month;
  - (ii) production volumes aggregated by a Project Owner in each Month for each Royalty Area pursuant to clause 17.5 shall be added to the Restated Royalty Inventory for each Royalty Area for that Month;
  - (iii) a Project Owner's Restated Royalty Inventory shall be conclusively deemed sold by such Project Owner during such Month on a first in, first out basis before any of the production added to the Royalty Inventory in such Month pursuant to subclause 21.1(b)(ii) is considered to be sold. Such sales from Restated Royalty Inventory shall be allocated to the Royalty Areas in the same proportion as the Restated Royalty Inventory balances were allocated to the Royalty Areas;
  - (iv) if the Restated Royalty Inventory balance is reduced to zero in a Month pursuant to subclause 21.1(b)(iii), then the remaining sales volumes for that Month shall be allocated to the Royalty Areas in proportion to the production aggregated to the Royalty Areas by that Project Owner for that Month pursuant to clause 17.5; and
  - (v) if a Project Owner sells more than its total volumes of Restated Royalty Inventory and production in a Month, any additional volumes sold by such Project Owner during such Month shall be recorded as a negative closing Royalty Inventory for that Month and such negative closing Royalty Inventory shall be allocated among the Royalty Areas in the same proportion as the production of Hibernia Blend was aggregated by such Project Owner for such Month pursuant to clause 17.5.

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- (c) If the opening Royalty Inventory balance for a Month is zero, then the sales volumes for that Month shall be allocated to the Royalty Areas in proportion to the production aggregated to the Royalty Areas by that Project Owner for that Month pursuant to clause 17.5.
- (d) The ending Royalty Inventory for each Month, as determined pursuant to clauses 21.1 (a), (b) and (c) shall be the opening Royalty Inventory for the following Month.
- (e) For the purposes of this calculation, sales shall include deemed sales as contemplated in clause 24.8 of the PL1001 Royalty Agreement and clause 24.8 of the EL1093/PL1005 Royalty Agreement.

## 21.2 Aggregation of Hibernia Blend Gross Sales Volumes

Each Month, each Project Owner shall aggregate the volume of Hibernia Blend sold as calculated in clause 21.1 from the Royalty Areas as follows:

- (a) PL1001 AA Blocks Royalty Area, PL1001 Southern Royalty Area and PL1001 Balance Royalty Area (the "**PL1001 Sales Volume**"); and
- (b) EL1093/PL1005 Royalty Area (the "**EL1093/PL1005 Sales Volume**").

### 21.3 Hibernia Blend Gross Sales Revenue Allocation

For each Month, each Project Owner shall allocate its Hibernia Blend Gross Sales Revenue between (a) PL1001 and (b) EL1093 and PL1005 as follows:

- (i) to PL1001 in accordance with the formula (A/C) x Hibernia Blend Gross Sales Revenue;
- (ii) to EL1093 and PL1005 in accordance with the formula (B/C) x Hibernia Blend Gross Sales Revenue;

where, in each case:

**A = PL1001 Sales Volume**

**B = EL1093/PL1005 Sales Volume**

$$C = A + B.$$

## **ARTICLE 22 TARIFFS**

## 22.1 General Tariff Principles

The Project Owners acknowledge that in order to be considered eligible costs under the Royalty Agreements, any tariff, fee or other charge payable for access to or use of facilities needs to be reasonable taking into consideration:

- (a) open access to infrastructure;
- (b) out of pocket cost recovery;
- (c) permissible tariff rate commensurate with infrastructure owner's risk, deferred production and opportunity costs;
- (d) infrastructure not a profit centre if costs have already been recovered; and
- (e) agreement negotiated between arm's length parties are preferable.

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## **22.2 Tariff Costs**

- (a) Tariffs, other than Tariffs paid by Nalcor Oil (the "Nalcor Tariffs"), shall be calculated and paid pursuant to the Tariff Agreement.
- (b) For the purposes of calculating Royalty Share EL1093/PL1005, Tariffs actually paid pursuant to subclause 22.2(a) by a Project Owner, shall be a Resource Project Eligible Operating Cost or a Resource Project Eligible Capital Cost, pursuant to clause 30.1 of the EL1093/PL1005 Royalty Agreement.
- (c) Nalcor Tariffs paid pursuant to the Tariff Agreement shall be a Resource Project Eligible Operating Cost for the purposes of calculating Royalty Share PL1001 and a Resource Project Eligible Operating Cost for the purposes of calculating Royalty Share EL1093/PL1005. The Nalcor Tariffs paid in a Month shall be allocated by Nalcor Oil between PL1001 and EL1093/PL1005 in the same proportion as Unit Production is allocated to PL1001 and EL1093/PL1005 for that Month in accordance with clause 17.3 of this Agreement.
- (d) No Tariffs shall be eligible for any uplift pursuant to the Royalty Agreements or otherwise.
- (e) For greater certainty, during any rebalancing period contemplated in Subsection 4.4(D) and (E) of Schedule C of the Unit Agreement, allocation of net processing tariffs paid pursuant to the Tariff Agreement shall be adjusted based on the amount of Unit Production allocated to each Project Owner during such rebalancing period.

## **22.3 Tariff Revenue**

- (a) The aggregate of all Tariffs paid pursuant to subclause 22.2(a) and (c) shall be allocated to PL1001 and shall be deemed to be Resource Project Incidental Revenue for the purposes of calculating Royalty Share PL1001.
- (b) The Tariffs paid pursuant to subclause 22.2(a) shall be allocated amongst the Project Owners other than Nalcor Oil pursuant to the Tariff Agreement.
- (c) The Nalcor Tariffs paid pursuant to subclause 22.2(c) shall be allocated amongst the Project Owners other than Nalcor Oil in proportion to the Working Interest of each Project Owner in PL1001.

## **ARTICLE 23 NON-COMPLIANCE**

### **23.1 Non-Compliance**

In the event of the failure by a Project Owner, a Resource Project Operator, the Unit Operator, the GBS Operator, the Tariff Administrator, a Tanker Administrator, the Tanker Cost Aggregator, or the Transshipment Operator to comply with any term, covenant or undertaking in this Agreement, the Province shall give the Project Owners notice of such failure. In the event the failure is not cured to the satisfaction of the Province within 15 days of the receipt of such notice, then the Project Owners shall make a reasonable interim estimate, which estimate shall form the basis for the calculation of Royalty Share PL1001 or Royalty Share EL1093/PL1005, as applicable. Where the Province is of the view that such estimate is not reasonable in the circumstances, the Province may substitute therefor a reasonable estimate as established by the Province which shall be used for the calculation of Royalty Share PL1001 or Royalty Share EL1093/PL1005.

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## ARTICLE 24 ARBITRATION

### 24.1 Arbitration

The provisions of Schedule F shall apply to every disagreement among the parties hereto as regards any matter expressly allowed in this Agreement and in the Royalty Agreements to be submitted to arbitration.

## ARTICLE 25 GOVERNING LAW

### 25.1 Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws in force in Newfoundland and Labrador.

### 25.2 Attornment

Each party hereto irrevocably submits to and accepts the exclusive jurisdiction of the courts of Newfoundland and Labrador and all courts of appeal therefrom as regards any legal proceedings relative to this Agreement which involve or may involve the Province and agrees that no legal proceedings regarding this Agreement which involve or may involve the Province shall be instituted in the courts of any other jurisdiction except to enforce a judgment or order issued in legal proceedings commenced in the courts of Newfoundland and Labrador except as otherwise specifically provided for herein. Each party hereto irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of any legal proceedings relative to this Agreement. Each of the parties hereto irrevocably agrees that a final judgement of the courts of Newfoundland and Labrador or any court of appeal therefrom and in respect of which all appeal periods have expired without appeal shall be conclusive and may be enforced in other jurisdictions by legal proceedings on the judgement or in any other manner provided by law.

### 25.3 Address for Service of Legal Process

Each Project Owner and each Licensee hereby appoints the Person whose name is set forth below to be its agent to receive on its behalf service of all and any papers which may be served in any legal proceedings relative to this Agreement which involve the Province:

Managing Partner  
c/o Stewart McKelvey  
Cabot Place  
100 New Gower Street  
P.O. Box 5038  
St. John's, Newfoundland and Labrador  
Canada  
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Each Project Owner and each Licensee hereto shall at all times throughout the currency of this Agreement have an agent within Newfoundland and Labrador to receive service on its behalf as aforesaid. A Licensee or Project Owner may change its agent by written notice to the Province and the other Project Owners and Licensees. The provisions of this clause shall not restrict the ability of

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any party to this Agreement to effect service in any other manner permitted by law. Each Project Owner and Licensee agrees that service upon its agent appointed in or pursuant to this clause made in the manner provided for in Article 25 is, and waives each and all objections which it may hereafter have that service made in the manner provided for in this clause is not, valid and effective service for the purposes of any legal proceedings relative to this Agreement which involve the Province.

## ARTICLE 26 ASSIGNMENT AND NOVATION

### 26.1 Assignment and Novation

A Project Owner or a Licensee shall not make an assignment of any rights or obligations under this Agreement unless such Project Owner or Licensee delivers to the Province a form of Novation Agreement attached as Schedule C to the Royalty Agreements. Any Novation Agreement pursuant to this Article 26 shall not be of any force or effect unless and until such Novation Agreement includes an assignment and novation of that Project Owner's or Licensee's obligations pursuant to the Royalty Agreements in respect of the interest conveyed pursuant to such Novation Agreement.

## ARTICLE 27 NOTICES

### 27.1 Form and Delivery

Notices or other communications from one party to another (hereinafter collectively referred to as "Notices") that are required or permitted under this Agreement shall be in writing and shall be delivered by hand or by courier, sent by prepaid registered mail, or be transmitted by facsimile or other similar form of telecommunication, to the party to whom it is to be given at the following addresses:

- (a) Her Majesty in Right of the Province of Newfoundland and Labrador  
P.O. Box 8700,  
Confederation Building  
St. John's, NL A1B 4J6  
  
Attention: Minister of Natural Resources  
Facsimile: (709) 729-0059  
Telephone: (709) 729-2920
- (b) ExxonMobil Canada Properties, ExxonMobil Canada Hibernia Company Ltd. or ExxonMobil Canada Ltd.  
Suite 1000, Cabot Place 100 New Gower Street  
St. John's, NL A1C 6K3  
  
Attention: President  
Facsimile: (709) 754-1043  
Telephone: (709) 778-7000
- (c) Chevron Canada Resources or Chevron Canada Limited  
500 – 5 Avenue S.W.  
Calgary, Alberta T2P 0L7

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Attention: Vice President, Asset Development  
Facsimile: (403) 234-5979  
Telephone: (403) 234-5000

(d) Statoil Canada Ltd.  
Suite 600, Scotia Centre  
235 Water Street  
St. John's, NL A1C 1B6  
Attention: Vice President, Offshore Upstream  
Facsimile: (709) 726-9053  
Telephone: (709) 726-9091

(e) Petro-Canada Hibernia Partnership or Suncor Energy Inc.  
Scotia Centre, 235 Water Street  
St. John's, NL A1C 1B6  
Attention: Vice President, East Coast  
Facsimile: (709) 724-2835  
Telephone: (709) 778-3500

(f) Canada Hibernia Holding Corporation  
1750 Sun Life Plaza, West Tower  
144 - 4th Avenue SW  
Calgary AB T2P 3N4  
Attention: Vice President and Chief Operating Officer  
Facsimile: (403) 269-7861  
Telephone: (403) 269-7858

(g) Murphy Atlantic Offshore Oil Company Ltd.  
1700, 555 4<sup>th</sup> Ave S.W.  
Calgary AB T2P 3E7  
Attention: Vice President Joint Ventures and Business Development  
Facsimile: (403) 294-8851  
Telephone: (403) 294-8000

(h) Nalcor Energy - Oil and Gas Inc.  
P.O. Box 12800  
St. John's, NL A1B 0C9  
Attention: Vice President Oil & Gas  
Facsimile: (709) 737-1416  
Telephone: (709) 737-1440

## 27.2 Deemed Delivery

For the purposes of this Agreement, Notices given by one party hereto to another shall:

(a) where delivered by prepaid registered mail, be conclusively deemed to have been given on the fourth day (except Saturdays, Sundays, statutory holidays and days upon which postal service in Canada is interrupted) after the mailing thereof;

(b) where delivered to the receiving party by hand or by courier, be conclusively deemed to have been given at the time of delivery; and

200 00 00 00  
13 20 00 00

(c) where transmitted to the receiving party by facsimile, be conclusively deemed to have been given at 10:00 o'clock in the forenoon (local time of the recipient) on the next Business Day following the day on which it is transmitted.

### **27.3 Change of Address**

A party may give Notice of a change of address in the manner provided in clause 27.1, in which event Notices shall thereafter be given to that party at such changed address.

## **ARTICLE 28 MISCELLANEOUS**

### **28.1 Prior Agreements**

This Agreement and the Schedules to this Agreement supersede all prior agreements, understandings or writings among the parties, whether written or oral and whether legally enforceable or not, in connection with the subject matter herein.

### **28.2 Stability**

The Province acknowledges that each of the Project Owners relies upon the good faith of the Province to maintain substantially the legislative and regulatory framework applicable to the Resource Projects as of the date of this Agreement, to the extent that doing so is in the public interest and, without limiting the generality of the foregoing, is consistent with governmental responsibilities, including responsibility for ensuring proper management of its resources, the protection and maintenance of public health and safety and the protection of the environment. Each of the Project Owners acknowledges that the Province relies upon the good faith of each of the Project Owners, respectively, to carry out its undertakings in this Agreement.

### **28.3 Inurement**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as provided for herein.

### **28.4 Relationship of Parties**

It is not the intention of the parties hereto to create nor shall this Agreement create or be construed as creating any partnership or agency relationship among the parties hereto, or any of them, so as to render the parties hereto, or any of them, liable to the other parties hereto, or any of them, for anything more than the performance of their respective obligations in accordance with the terms of this Agreement. Nothing in this Agreement gives any party hereto the right to take any action, and no party hereto shall purport pursuant or in relation to this Agreement to take any action, that is binding upon any other party hereto without the prior written consent of that other party hereto.

### **28.5 Waiver in Writing**

No waiver by a party hereto of any provision, or the breach of any provision, of this Agreement shall be effective unless it is contained in a written instrument signed by authorized officers or representatives of the party hereto. Such written waiver shall affect only the matter specifically

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*DRD* *CH*  
*RP* *LG* *DP* *PR*

identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.

## 28.6 Delay Not Waiver

The failure of a party hereto to give notice to any other party hereto or to take any other steps in exercising any right, or in respect of the breach or non-fulfilment of any provision of this Agreement, shall not operate as a waiver of that right, breach or provision nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.

## 28.7 Acceptance of Payment Not Waiver

Acceptance of payment by a party hereto after the breach or non-fulfilment of any provision of this Agreement by another party shall not constitute a waiver of the provisions of this Agreement, other than any breach cured by such payment.

## 28.8 Time of the Essence

Time shall be of the essence of this Agreement.

## 28.9 Further Assurances

Each of the parties hereto shall at its own cost and expense, from time to time and without further consideration, execute or cause to be executed all documents which are necessary to give effect to the provisions of this Agreement.

## **ARTICLE 29 EXECUTION**

## 29.1 Counterpart Execution

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF each of the parties to this Agreement have caused this Agreement to be executed by their officers or representatives duly authorized in that behalf on the date first above written.

HER MAJESTY IN RIGHT OF THE PROVINCE OF  
NEWFOUNDLAND AND LABRADOR

Signature: Keetly J. Keating  
Name: \_\_\_\_\_  
Title: Premier (Acting)  
Signature: Keetly J. Keating  
Name: \_\_\_\_\_  
Title: Ministry of Natural Resources

EXXONMOBIL CANADA PROPERTIES

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

EXXONMOBIL CANADA LTD.

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

CHEVRON CANADA RESOURCES, a partnership,  
by its Managing Partner, CHEVRON CANADA  
LIMITED

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

NALCOR ENERGY-OIL AND GAS INC.

Signature: \_\_\_\_\_  
Name: E.J. Martin  
Title: President and Chief Executive Officer  
Signature: \_\_\_\_\_  
Name: James M. Keating  
Title: Vice President

EXXONMOBIL CANADA HIBERNIA COMPANY LTD.

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

CANADA HIBERNIA HOLDING CORPORATION

Signature: \_\_\_\_\_  
Name: Murray Todd  
Title: President and Chief Executive  
Officer

CHEVRON CANADA LIMITED

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

*do do A  
m off*

**IN WITNESS WHEREOF** each of the parties to this Agreement have caused this Agreement to be executed by their officers or representatives duly authorized in that behalf on the date first above written.

**HER MAJESTY IN RIGHT OF THE PROVINCE OF  
NEWFOUNDLAND AND LABRDOR**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXXONMOBIL CANADA PROPERTIES**

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

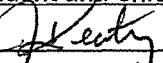
**EXXONMOBIL CANADA LTD.**

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

**CHEVRON CANADA RESOURCES**, a partnership,  
by its Managing Partner, **CHEVRON CANADA  
LIMITED**

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

**NALCOR ENERGY-OIL AND GAS INC.**

Signature:   
Name: E.J. Martin  
Title: President and Chief Executive Officer  
Signature:   
Name: James M. Keating  
Title: Vice President

**EXXONMOBIL CANADA HIBERNIA COMPANY LTD.**

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

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Signature: \_\_\_\_\_  
Name: Murray Todd  
Title: President and Chief Executive  
Officer

**CHEVRON CANADA LIMITED**

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

*Handwritten signatures and initials are present in the bottom right corner of the page, including "A", "J.W.", "R.H.", "D.O.", "D.O.", "R.H.", "J.W.", and "A".*

IN WITNESS WHEREOF each of the parties to this Agreement have caused this Agreement to be executed by their officers or representatives duly authorized in that behalf on the date first above written.

HER MAJESTY IN RIGHT OF THE PROVINCE OF  
NEWFOUNDLAND AND LABRADOR

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXXONMOBIL CANADA PROPERTIES

Signature: G. Scott  
Name: Glenn Scott  
Title: President

EXXONMOBIL CANADA LTD.

Signature: G. Scott  
Name: Glenn Scott  
Title: President

CHEVRON CANADA RESOURCES, a partnership,  
by its Managing Partner, CHEVRON CANADA  
LIMITED

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

NALCOR ENERGY-OIL AND GAS INC.

Signature: \_\_\_\_\_  
Name: E.J. Martin  
Title: President and Chief Executive Officer  
Signature: \_\_\_\_\_  
Name: James M. Keating  
Title: Vice President

EXXONMOBIL CANADA HIBERNIA COMPANY LTD.

Signature: G. Scott  
Name: Glenn Scott  
Title: President

CANADA HIBERNIA HOLDING CORPORATION

Signature: \_\_\_\_\_  
Name: Murray Todd  
Title: President and Chief Executive  
Officer

CHEVRON CANADA LIMITED

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

*dad A  
D. H.  
R. W.*

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HER MAJESTY IN RIGHT OF THE PROVINCE OF  
NEWFOUNDLAND AND LABRADOR

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
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Title: \_\_\_\_\_

EXXONMOBIL CANADA PROPERTIES

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

EXXONMOBIL CANADA LTD.

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NALCOR ENERGY-OIL AND GAS INC.

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Name: E.J. Martin  
Title: President and Chief Executive Officer  
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Title: Vice President

EXXONMOBIL CANADA HIBERNIA COMPANY LTD.

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

CANADA HIBERNIA HOLDING CORPORATION

Signature: Murray Todd  
Name: Murray Todd  
Title: President and Chief Executive  
Officer

CHEVRON CANADA LIMITED

Signature: \_\_\_\_\_  
Name: S.T. Hutchison  
Title: Vice President  
Signature: \_\_\_\_\_  
Name: Jeff Wasko  
Title: Vice President

*BB* *AA*  
*BB* *AA*  
*BB* *AA*

IN WITNESS WHEREOF each of the parties to this Agreement have caused this Agreement to be executed by their officers or representatives duly authorized in that behalf on the date first above written.

HER MAJESTY IN RIGHT OF THE PROVINCE OF  
NEWFOUNDLAND AND LABRADOR

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

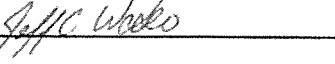
EXXONMOBIL CANADA PROPERTIES

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

EXXONMOBIL CANADA LTD.

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

CHEVRON CANADA RESOURCES, a partnership,  
by its Managing Partner, CHEVRON CANADA  
LIMITED

Signature:   
Name: S.T. Hutchison  
Title: Vice President  
Signature:   
Name: Jeff Wasko  
Title: Vice President

NALCOR ENERGY-OIL AND GAS INC.

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Name: James M. Keating  
Title: Vice President

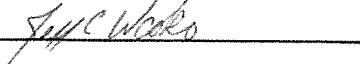
EXXONMOBIL CANADA HIBERNIA COMPANY LTD.

Signature: \_\_\_\_\_  
Name: Glenn Scott  
Title: President

CANADA HIBERNIA HOLDING CORPORATION

Signature: \_\_\_\_\_  
Name: Murray Todd  
Title: President and Chief Executive  
Officer

CHEVRON CANADA LIMITED

Signature:   
Name: S.T. Hutchison  
Title: Vice President  
Signature:   
Name: Jeff Wasko  
Title: Vice President

*BB* *AS*  
*BB* *AS*  
*BB* *AS*  
*BB* *AS*  
*BB* *AS*  
*BB* *AS*

SUNCOR ENERGY INC.

Signature: *ABrown*  
Name: Alan Brown  
Title: Authorized Signatory

STATOIL CANADA LTD.

Signature: \_\_\_\_\_  
Name: Hege Rognø  
Title: Vice President, Offshore  
Upstream

PETRO-CANADA HIBERNIA PARTNERSHIP, a  
partnership by its Managing Partner, SUNCOR ENERGY  
INC.

Signature: *ABrown*  
Name: Alan Brown  
Title: Authorized Signatory

MURPHY ATLANTIC OFFSHORE OIL COMPANY LTD.

Signature: \_\_\_\_\_  
Name: Cal C. Buchanan  
Title: Vice President

*ABrown  
AC  
AB  
AC  
AB  
AC  
AB  
AC*

**SUNCOR ENERGY INC.**

Signature: \_\_\_\_\_  
Name: Alan Brown  
Title: Authorized Signatory

**STATOIL CANADA LTD.**

Signature: Hege Rognø  
Name: Hege Rognø  
Title: Vice President, Offshore  
Upstream

**PETRO-CANADA HIBERNIA PARTNERSHIP, a  
partnership by its Managing Partner, SUNCOR ENERGY  
INC.**

Signature: \_\_\_\_\_  
Name: Alan Brown  
Title: Authorized Signatory

**MURPHY ATLANTIC OFFSHORE OIL COMPANY LTD.**

Signature: \_\_\_\_\_  
Name: Cal C. Buchanan  
Title: Vice President

*Hege Rognø  
Alan Brown  
Cal C. Buchanan  
RB  
BB  
AS  
P*

SUNCOR ENERGY INC.

Signature: \_\_\_\_\_  
Name: Alan Brown  
Title: Authorized Signatory

STATOIL CANADA LTD.

Signature: \_\_\_\_\_  
Name: Hege Rognø  
Title: Vice President, Offshore  
Upstream

PETRO-CANADA HIBERNIA PARTNERSHIP, a  
partnership by its Managing Partner, SUNCOR ENERGY  
INC.

Signature: \_\_\_\_\_  
Name: Alan Brown  
Title: Authorized Signatory

MURPHY ATLANTIC OFFSHORE OIL COMPANY LTD.

Signature: Cal B  
Name: Cal C. Buchanan  
Title: Vice President

*RB AB BB CC  
JC*

**SCHEDULE A**  
**ACKNOWLEDGEMENT AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_.

**BETWEEN:**

\_\_\_\_\_, a body corporate, having offices at the City of \_\_\_\_\_, in the Province of \_\_\_\_\_, (hereinafter referred to as the "Compliance Person")

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR (herein referred to as the "Province")

**WHEREAS** the Province, the Project Owners and the Licensees are parties to the PL1001 Royalty Agreement and an Allocation Agreement dated \_\_\_\_\_ (the "Allocation Agreement") relative to the royalty payable on crude oil produced pursuant to PL1001;

**AND WHEREAS** the Province, the Project Owners and the Licensees are parties to the EL1093/PL1005 Royalty Agreement and the Allocation Agreement relative to royalty payable on crude oil produced pursuant to PL1005 and EL1093; and

**WHEREAS** the Compliance Person has been appointed by the Project Owners, and will be making calculations and allocations, maintaining books and records, and/or otherwise conducting operations, in respect of the Allocation Agreement and has agreed to comply with the provisions of the Allocation Agreement;

**NOW THEREFORE** in consideration of the premises, one dollar (\$1.00) and other good and valuable consideration (receipt whereof is hereby acknowledged) the parties hereby covenant and agree as follows:

**1. Definitions**

The words and phrases in this Agreement (including the recitals hereto) shall, unless otherwise defined herein, have the same meanings as such words and phrases have in the Allocation Agreement.

**2. No Security**

The Compliance Person, in its own right, on its own behalf or for its own benefit has no security interest (i) against PL1001, PL1005, or EL1093 (referred in this Acknowledgement Agreement as the "Licences"), (ii) against Crude Oil produced from the Licences, or (iii) against the proceeds from Crude Oil produced from the Licences other than security interests which, pursuant to the requirements of the Royalty Agreements, are subordinate to the security interests held by the Province thereunder.

**3. Compliance with Allocation Agreement**

The Compliance Person covenants and agrees with the Province that it shall:

- i. comply with each and every provision of the Allocation Agreement which the Allocation Agreement requires the Project Owners, or any of them, to cause the Compliance Person to comply with; and

*AN  
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CH  
RF  
LS  
Z  
W*

ii. perform or refrain from performing each and every matter which the Allocation Agreement requires the Project Owners, or any of them, to cause the Compliance Person to perform or refrain from performing, as the case may be.

**4. Counterparts**

This Agreement may be executed in one or more counterparts, all of which when executed shall constitute one and the same agreement.

**5. Address of Compliance Person**

The address of the Compliance Person for notices under the Allocation Agreement shall be the address set forth below; namely:

---

---

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---

Facsimile Number: \_\_\_\_\_

**6. Agent for Service for Compliance Person**

For the purposes of clause 27.1 of the Allocation Agreement the Person whose name is set forth below is to be the agent of the Compliance Person to receive on its behalf service of all and any papers which may be served in any legal proceedings relative to the Allocation Agreement which involve the Province, namely:

---

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**7. Governing Law**

This Agreement shall be governed by, and construed in accordance with the laws in force in Newfoundland and Labrador.

**8. Inurement**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**9. Further Assurances**

The Compliance Person shall, at its expense, make, execute and deliver or cause to be made, executed and delivered all such documents and instruments and do or cause to be done all such things as the Province may at any time and from time to time reasonably require for the purposes of giving effect to this Agreement including, without limitation, executing postponements of its rights.

DR JR A  
DR CT  
PB LG PD M

**IN WITNESS WHEREOF** each of the parties of this Agreement has caused this Agreement to be executed by their officers or representatives duly authorized in that behalf on the date first above written.

\* \_\_\_\_\_

Per: \_\_\_\_\_  
(\*\* )

Per: \_\_\_\_\_  
(\*\* )

**HER MAJESTY IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR**

Represented by:

\_\_\_\_\_  
(\*\* )

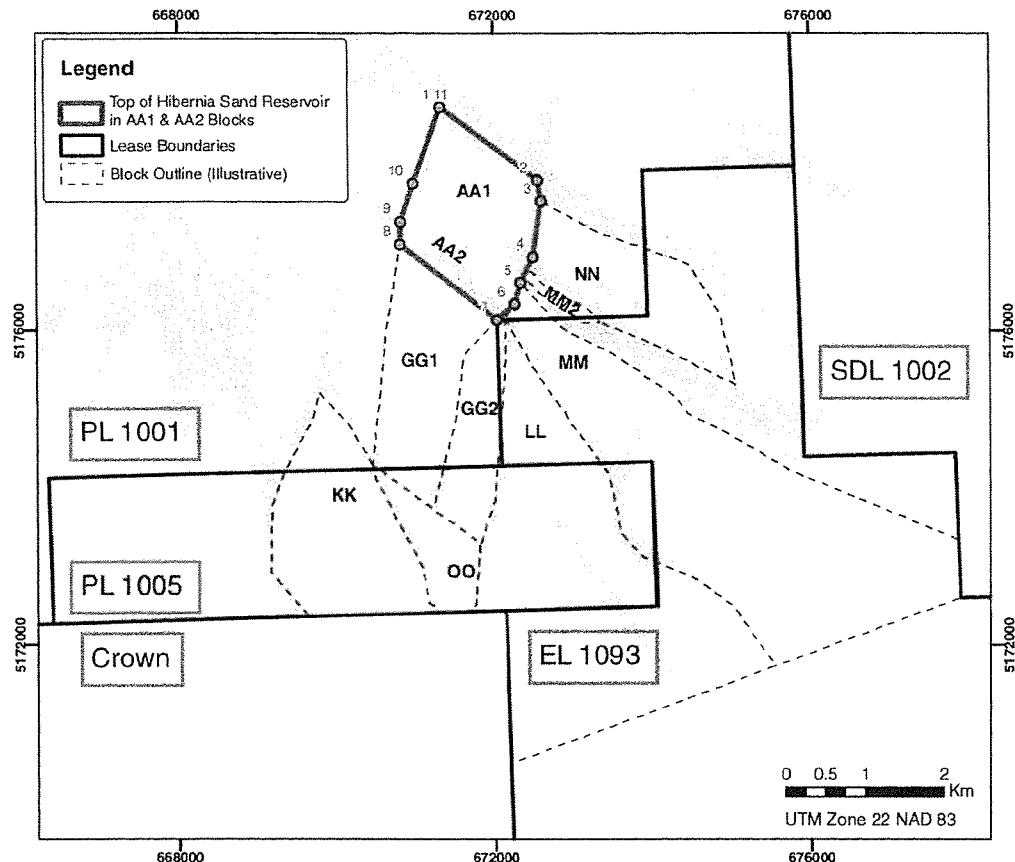
\_\_\_\_\_  
(\*\* )

- Name of Compliance Person to be inserted before execution
- Name and title of officer signing to be inserted before execution

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DAD CH  
PH S Z M P

**SCHEDULE B**  
**PL1001 AA BLOCKS ROYALTY AREA**

**Top Hibernia-Sand Reservoir**

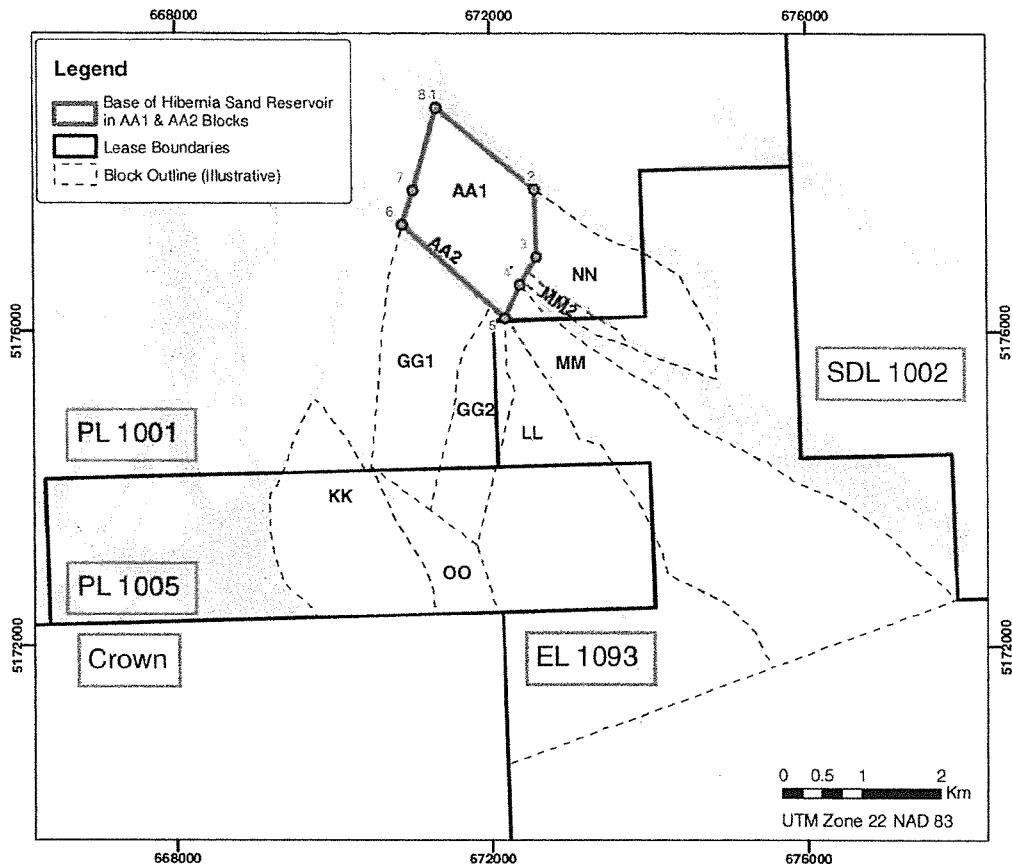


**Top Hibernia Polygon AA1 & AA2**  
**Polygon Coordinates (UTM Zone 22, NAD83)**

Vertex	X (metres)	Y (metres)	Z (metres)
1	671326	5178835	-3828
2	672559	5177909	-4006
3	672601	5177640	-4074
4	672501	5176941	-4157
5	672345	5176607	-4315
6	672267	5176331	-4340
7	672040	5176130	-4263
8	670816	5177098	-3935
9	670817	5177383	-3987
10	670982	5177862	-3898
11	671326	5178835	-3828

PL 1001  
 PL 1005  
 EL 1093  
 AA1  
 AA2  
 KK  
 OO  
 MM  
 LL  
 NN  
 GG1  
 GG2  
 PL 1001 AA BLOCKS ROYALTY AREA

### **Base Hibernia-Sand Reservoir**



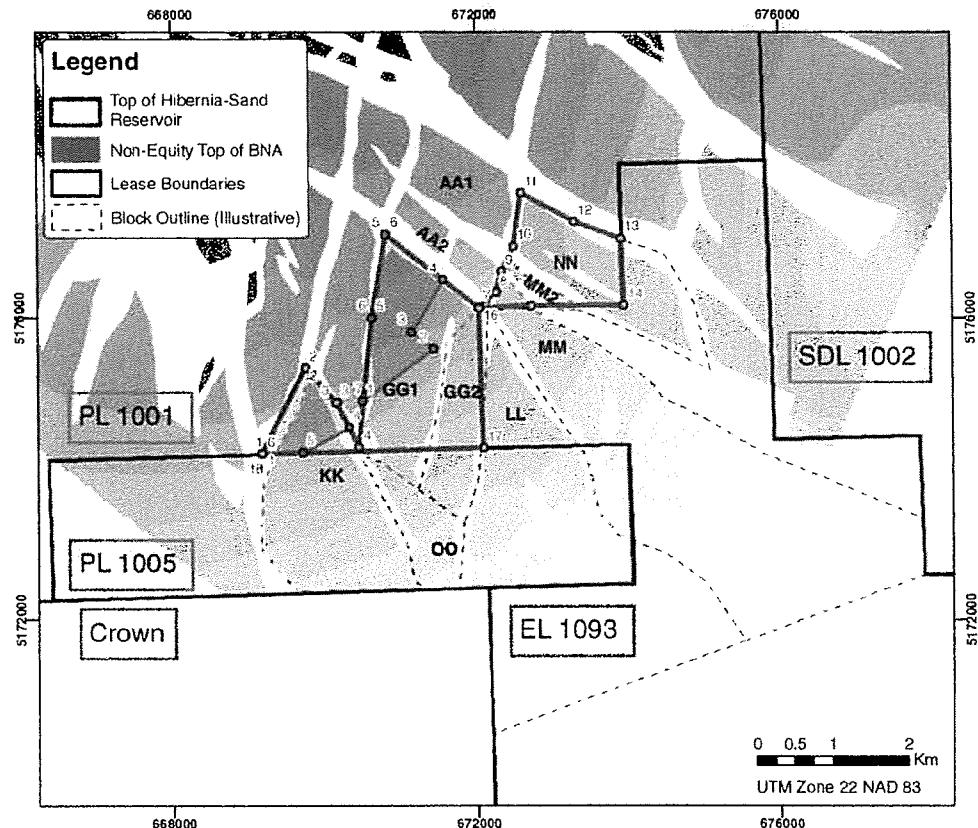
### Base Hibernia Polygon AA1 & AA2

### Polygon Coordinates (UTM Zone 22, NAD83)

Vertex	X (metres)	Y (metres)	Z (metres)
1	671325	5178831	-4047
2	672563	5177796	-4196
3	672586	5176944	-4296
4	672375	5176590	-4413
5	672186	5176166	-4327
6	670901	5177344	-4195
7	671034	5177782	-4156
8	671325	5178831	-4047

**SCHEDULE C**  
**PL1001 NON-UNIT SOUTHERN NON-EQUITY BNA AREA**

*Top Hibernia-Sand Reservoir and Top PL1001 Non-Unit Southern Non-Equity BNA Area*



**PL 1001 Southern Royalty Area**

**Top Hibernia -Sand Reservoir**

Polygon Coordinates (UTM Zone 22, NAD83)

Vertex	X (metres)	Y (metres)	Z (metres)
1	669175	5174203	-4260
2	669753	5175328	-4068
3	670160	5174877	-4181
4	670456	5174284	-4392
5	670631	5176000	-4023
6	670816	5177098	-3935
7	672040	5176130	-4263
8	672267	5176331	-4340
9	672345	5176607	-4315
10	672501	5176941	-4157
11	672601	5177640	-4074
12	673298	5177262	-4281
13	673927	5177046	-4370
14	673950	5176185	-4415
15	672738	5176154	-4461
16	672040	5176128	-4262
17	672093	5174276	-4573
18	669175	5174203	-4260

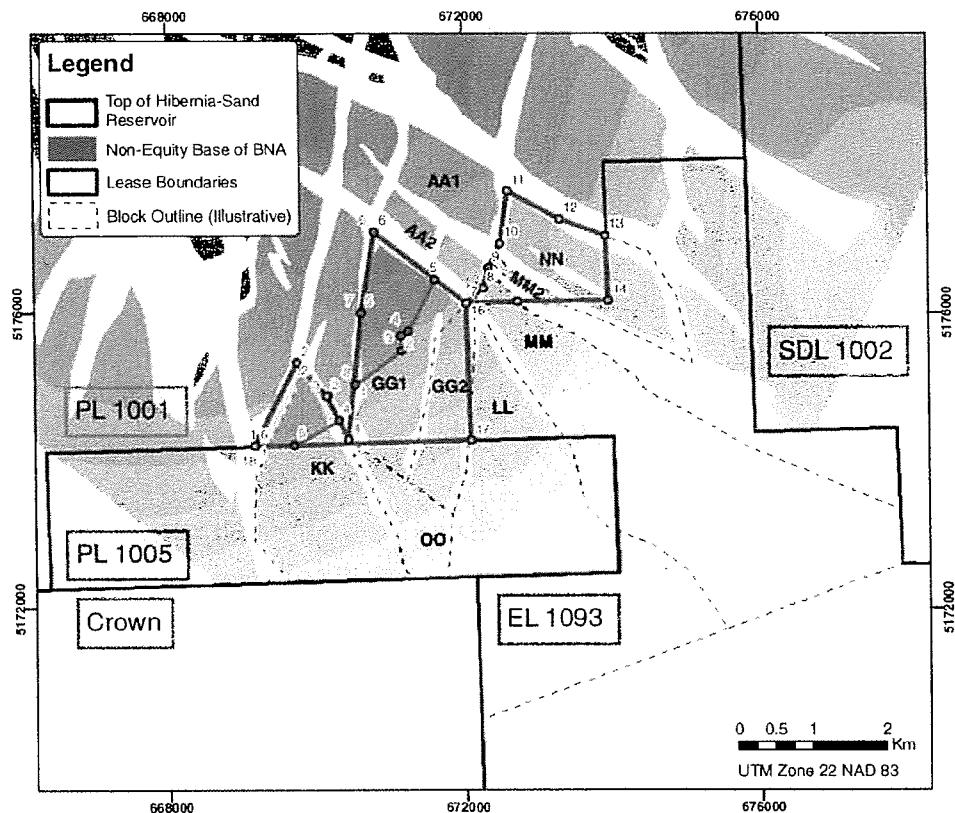
**PL 1001 Non-Unit Southern Non-Equity BNA Area**

**Polygon Coordinates (UTM Zone 22, NAD83)**

Vertex	X (metres)	Y (metres)	Z (metres)
KK Block			
1	669176	5174196	-2602
2	669753	5175328	-2495
3	670163	5174875	-2582
4	670311	5174544	-2647
5	669710	5174210	-2651
6	669176	5174196	-2602
GG1 Block			
1	670521	5174895	-2614
2	671431	5175581	-2720
3	671153	5175812	-2659
4	671563	5176503	-2563
5	670816	5177099	-2418
6	670631	5176000	-2516
7	670521	5174895	-2614

*DHD JK A  
DD CH  
FB L 32 M*

**Top Hibernia-Sand Reservoir and Base PL1001 Non-Unit Southern Non-Equity BNA Area**



**PL 1001 Southern Royalty Area  
Top Hibernia-Sand Reservoir**

Polygon Coordinates (UTM Zone 22, NAD83)			
Vertex	X (metres)	Y (metres)	Z (metres)
1	669175	5174203	-4260
2	669753	5175328	-4068
3	670160	5174877	-4181
4	670456	5174284	-4392
5	670631	5176000	-4023
6	670816	5177098	-3935
7	672040	5176130	-4263
8	672267	5176331	-4340
9	672345	5176607	-4315
10	672501	5176941	-4157
11	672601	5177640	-4074
12	673298	5177262	-4281
13	673927	5177046	-4370
14	673950	5176185	-4415
15	672738	5176154	-4461
16	672040	5176128	-4262
17	672093	5174276	-4573
18	669175	5174203	-4260

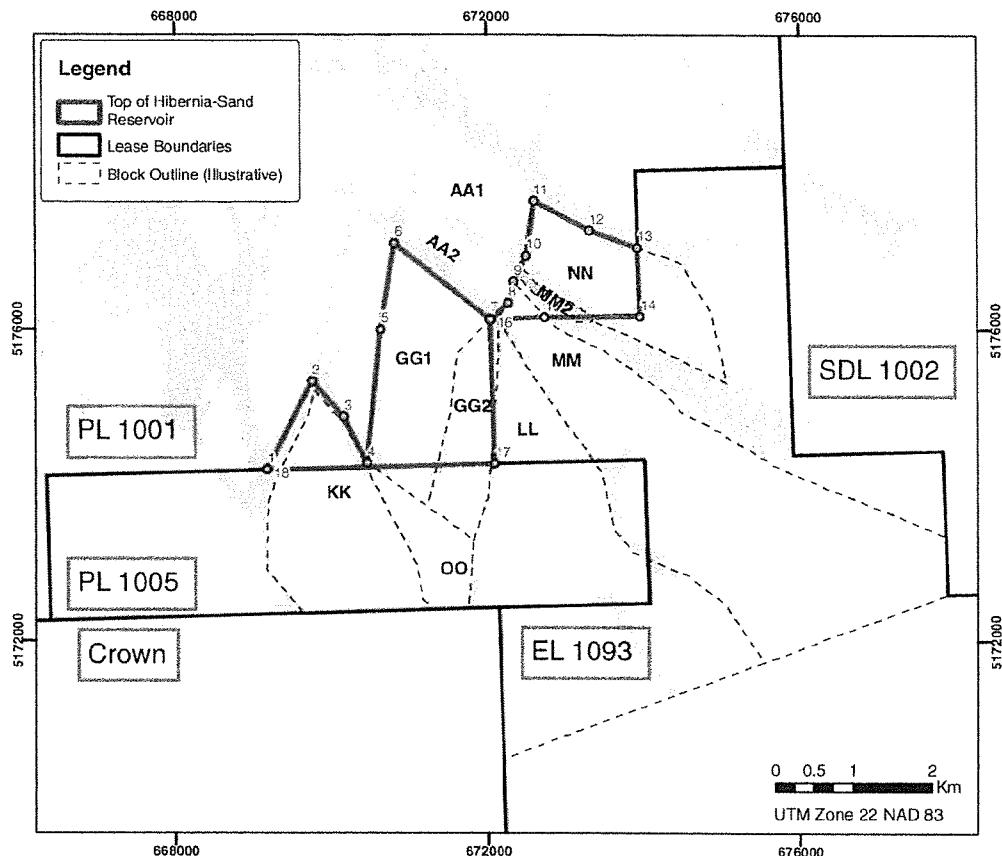
**PL 1001 Non-Unit Southern Non-Equity BNA Area  
Polygon Coordinates (UTM Zone 22, NAD83)**

Vertex	X (metres)	Y (metres)	Z (metres)
KK Block			
1	669176	5174196	-2841
2	669753	5175328	-2685
3	670163	5174875	-2769
4	670311	5174544	-2830
5	669710	5174210	-2884
6	669176	5174196	-2841
GG1 Block			
1	670535	5175038	-2743
2	671162	5175495	-2799
3	671159	5175694	-2805
4	671251	5175755	-2812
5	671623	5176459	-2762
6	670816	5177099	-2583
7	670631	5176000	-2592
8	670535	5175038	-2743

JD JK  
 JD CH  
 RB  
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**SCHEDULE D**  
**PL1001 SOUTHERN ROYALTY AREA**

*Top Hibernia-Sand Reservoir*

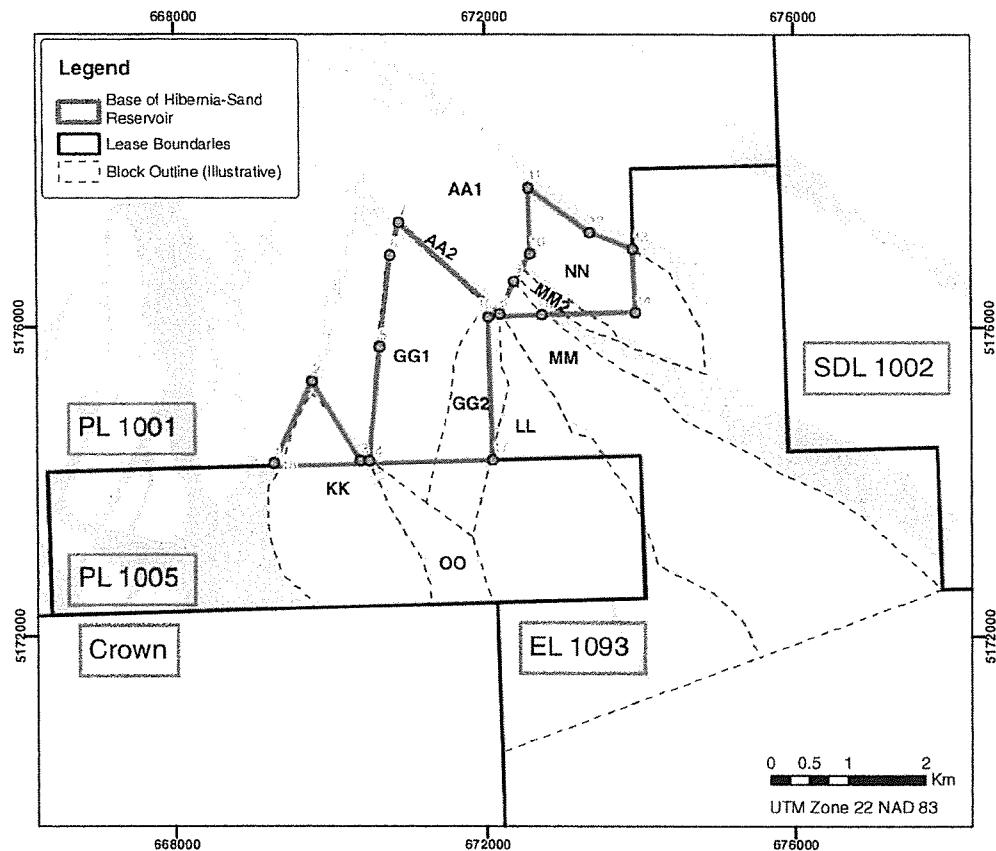


**PL 1001 Southern Royalty Area**  
**Top Hibernia-Sand Reservoir**  
**Polygon Coordinates (UTM Zone 22, NAD83)**

Vertex	X (metres)	Y (metres)	Z (metres)
1	669175	5174193	-4260
2	669753	5175328	-4068
3	670160	5174877	-4181
4	670455	5174230	-4392
5	670631	5176000	-4023
6	670816	5177098	-3935
7	672040	5176130	-4263
8	672267	5176331	-4340
9	672345	5176607	-4315
10	672501	5176941	-4157
11	672601	5177640	-4074
12	673298	5177262	-4281
13	673927	5177046	-4370
14	673950	5176185	-4415
15	672738	5176154	-4461
16	672040	5176128	-4262
17	672093	5174276	-4573
18	669175	5174193	-4260

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**Base Hibernia-Sand Reservoir**



**PL 1001 Southern Royalty Area**  
**Base Hibernia-Sand Reservoir**

**Polygon Coordinates (UTM Zone 22, NAD83)**

Vertex	X (metres)	Y (metres)	Z (metres)
1	669266	5174196	-4422
2	669768	5175301	-4249
3	670397	5174228	-4547
4	670502	5174230	-4528
5	670638	5175740	-4272
6	670782	5176924	-4096
7	670901	5177344	-4129
8	672186	5176166	-4327
9	672375	5176590	-4413
10	672586	5176944	-4296
11	672563	5177796	-4196
12	673353	5177220	-4421
13	673927	5177008	-4448
14	673950	5176185	-4588
15	672738	5176154	-4615
16	672040	5176128	-4328
17	672093	5174276	-4746
18	669266	5174196	-4422

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**SCHEDULE E**  
**TRANSPORTATION COSTS**

**ARTICLE 1**  
**Definitions**

The following defined terms shall have application to this Schedule only. Defined terms not set out in this Schedule have the meaning set out in Article 1.1 of the Agreement. In the event of a conflict between the defined terms of this Schedule and any other defined term in this Agreement, the provisions of this Schedule shall prevail:

- (1) **"Affiliate-Transportation"** has the same meaning as the words "affiliated persons" in section 251.1 of the *Income Tax Act* (Canada).
- (2) **"Aggregate ROCC Reduction"** means the amount determined in accordance with clause 15.7(c) of this Schedule.
- (3) **"Arm's Length-Transportation"** shall have the same meaning as in section 251 of the *Income Tax Act* (Canada) as amended from time to time. Notwithstanding the foregoing, the following shall not be considered to be Arm's Length-Transportation:
  - (i) an acquisition, sale or transaction involving only
    - (A) 2 or more Project Owners, or
    - (B) a Project Owner and an Affiliate-Transportation of a Project Owner, or
    - (C) two or more Affiliates-Transportation of a Project Owner;
  - (ii) where the amount of consideration is payable other than by a cash payment;
  - (iii) where the contract price is not the only consideration for the sale or transaction;
  - (iv) where the terms of a transaction are materially affected by a commercial relationship, other than that created by the transaction, among any of the parties to the transaction or anyone not at Arm's Length-Transportation with those parties;
  - (v) an acquisition, sale, sharing of costs or a transaction involving 2 or more Licences where each Licence is controlled by the same interest holder, or by a group of common interest holders in each Licence, including Affiliate-Transportations of those interest holders;
  - (vi) transactions between a Project Owner and a corporation if one or more Project Owners, alone or jointly, have a controlling interest in that corporation; and
  - (vii) those other circumstances that the Province may determine not to be at Arm's Length-Transportation.
- (4) **"Arm's Length Rule-Transportation"** means where a cost or revenue relates to a transaction, or a series of transactions that are not at Arm's Length-Transportation for the purposes of determining Royalty Share PL1001 or Royalty Share EL1093/PL1005: (i) such cost shall be valued at the lesser of the payment made for that transaction, in cash or in kind, or the fair market value thereof; and (ii) such revenue shall be valued at the greater of the payment received by or on behalf of the Project Owner for that transaction, in cash or in kind, or the fair market value thereof. For purposes of the Arm's Length Rule - Transportation, the reference to "fair market value" shall be the value based on transactions occurring in comparable open markets among Persons who are not Affiliates-Transportation.
- (5) **"CFR Sale"** means a sale of Hibernia Blend on a "CFR" basis as CFR is defined in Incoterms 2000.

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(6) “Capital Lease Shuttle Tanker Costs” means the costs set out in Article 9.

(7) “Competitive Tender Process” means an open and competitive tender process that either:

- (i) includes exclusively bidders who are at Arm’s Length-Transportation to all the Project Owners and their Affiliates-Transportation; or
- (ii) where one or more bidders are not at Arm’s Length-Transportation to the Project Owners, includes bids from at least two (2) parties at Arm’s Length-Transportation to the Project Owners;

and which results in the assessment and selection of bids on the basis of achieving best value as generally accepted in the industry including factors such as price, quality, service, safety, operational performance, total cost of ownership, and availability.

(8) “Eligible Other Transportation Costs” means those costs set out in Article 17.

(9) “Eligible Tanker Costs” means the tanker costs set out in Article 7.

(10) “Eligible Transportation Costs Deduction EL1093/PL1005” has the meaning set out in the EL1093/PL1005 Royalty Agreement.

(11) “Eligible Transportation Costs Deduction PL1001” has the meaning set out in the PL1001 Royalty Agreement.

(12) “Eligible Transshipment Costs” means the transshipment costs set out in Article 15.

(13) “GAAP - Transportation” means Canadian Generally Accepted Accounting Principles for Public Accountable Entities (as defined under the CICA Handbook) or its successors.

(14) “Hibernia Blend Tanker Days” means one or more days in which a tanker is In Use in relation to Hibernia Blend.

(15) “Hibernia ROCC Reduction” has the meaning set out in subclause 15.9(b)

(16) “Incidental Transportation Revenue” means the revenues described in Article 19.

(17) “Individual ROCC Reduction” means the amount determined in accordance with clause 15.7(d) of this Schedule.

(18) “In Use” means a day in which a tanker is:

- (i) in use in carrying Crude Oil; or
- (ii) returning to the point of origin for a voyage for the purpose set out in item (i), or to an alternate location in the Offshore Area where the point of origin for a voyage for the purpose described in item (i) was in or near the Jeanne D’Arc Basin (“NL Area”); but where a tanker that has delivered Crude Oil from the NL Area goes to an alternate location outside of the NL Area, the days for item (ii) shall be an amount deemed to be an equivalent amount of time for a voyage returning to a location in the NL Area.

(19) “Licence” means an exploration licence, significant discovery licence, production licence or other licence issued or to be issued by the Board in respect of lands located in the Offshore Area.

(20) “Kometik” means the tanker Kometik with Transport Canada Official Number 819109.

(21) “Mattea” means the tanker Mattea with Transport Canada Official Number 819115.

(22) “Newfoundland Transshipment Limited” means a body corporate extra provincially registered in Newfoundland and Labrador.

(23) “New Tanker” means a tanker that is less than 12 months old.

- (24) **"Non-NL Tanker Days"** means one or more days in which a tanker is In Use in relation to Crude Oil which is not produced in the Offshore Area.
- (25) **"Operating Lease Shuttle Tanker Costs"** means the costs set out in Article 10.
- (26) **"Other NL Tanker Days"** means one or more days in which a tanker is In Use in relation to Crude Oil, other than Hibernia Blend, produced from a license in the Offshore Area
- (27) **"Owned Shuttle Tanker Costs"** means the costs set out in Article 8.
- (28) **"Profitable Outcharter"** means a Shuttle Tanker which is being used in substitution of a tanker in a Licence other than in PL1001, PL1005, or EL1093, where: (i) such Shuttle Tanker is not ordinarily used to transport Crude Oil from the other Licence; and (ii) the tanker ordinarily used for the other Licence is out of service for repairs or maintenance or otherwise temporarily unavailable for use to transport Crude Oil, and is anticipated to return to use in the transportation of Crude Oil in that other Licence within the following 12 months. A Shuttle Tanker used as a Profitable Outcharter in another Licence for longer than 12 consecutive months shall thereafter not be considered a Profitable Outcharter.
- (29) **"Second Leg Tanker"** means a tanker which transports Hibernia Blend from the Whiffen Head Transshipment Terminal to the Sale Point.
- (30) **"Second Leg Tanker Costs"** means costs set out in Article 11.
- (31) **"Temporary Replacement Tanker Costs"** means costs set out in Article 12.
- (32) **"Total ROCC Reduction"** has the meaning set out in subclause 15.7(a).
- (33) **"Total Used Tanker Days"** means the sum of:
  - (i) Hibernia Blend Tanker Days;
  - (ii) Other NL Tanker Days; and
  - (iii) Non-NL Tanker Days.
- (34) **"Transportation Allocation Agreement"** means the agreement set out in clause 14.3.
- (35) **"Transshipment Allocation Agreement"** means the agreement set out in clause 16.1.
- (36) **"Transshipment Terminal Agreements"** means the agreements described in clause 16.3.
- (37) **"Transshipment Terminal Owners"** means the Project Owners who are legal or beneficial owners, or who have Affiliates-Transportation which are legal or beneficial owners, of interests in the Whiffen Head Transshipment Terminal and "Transshipment Terminal Owner" means any one of them.
- (38) **"Vinland"** means the tanker Vinland with Transport Canada Official Number 820794.

## ARTICLE 2

### General

- 2.1 Notwithstanding any other provision of this Schedule, Eligible Transportation Costs shall only be included up to the Sale Point, but in the case of a CFR Sale where the Sale Price includes transportation to the point of delivery, Eligible Transportation Costs shall be eligible to such point of delivery.
- 2.2 The Sale Point herein shall not include sales from a Project Owner to one of its Affiliates-Transportation at the Loading Point. The Eligible Transportation Costs for the transportation of Hibernia Blend by such Affiliate-Transportation shall be governed by this Schedule as if the Affiliate-Transportation were a Project Owner.

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- 2.3 Costs allocated to the use of a Shuttle Tanker for Non-NL Tanker Days, and revenues associated with such use, as well as a proportionate share of idle time, shall not be Eligible Transportation Costs.
- 2.4 For greater clarity, there shall be no incidental revenue derived from the disposal of a Shuttle Tanker, but proceeds from the disposal of assets relating to any other cost claimed as an Eligible Transportation Cost shall be used to reduce those costs claimed for royalty calculation purposes.
- 2.5 Where a Project Owner has included insurance costs as Eligible Transportation Costs, and the Project Owner has received the benefit of insurance proceeds, the Project Owner shall recognize these proceeds as a credit against Eligible Transportation Costs to the lesser amount of the actual benefit received or the cumulative costs claimed.

### **ARTICLE 3** **Eligible Transportation Cost Requirements**

- 3.1 Except as specifically provided in this Schedule, a cost qualifies as an Eligible Transportation Cost to the extent that it satisfies each of the following cost eligibility requirements:
  - (a) it is an Actual Cash Payment;
  - (b) it is directly attributable to the transportation of Hibernia Blend;
  - (c) it is reasonable in relation to the circumstances under which it is incurred; and
  - (d) it is not a disallowed cost in Article 4 of this Schedule.

### **ARTICLE 4** **Disallowed Costs**

- 4.1 A cost is a disallowed cost and shall not qualify as an Eligible Transportation Cost if it is one of the following:
  - (a) a penalty, interest or other financing charge, underwriters' commission, investment banking fee, redemption premium or other similar cost;
  - (b) an amount for the overhead of a Project Owner, the Resource Project Operator, the Unit Operator, the GBS Operator, the Tanker Administrators, the Tanker Cost Aggregator, the Transshipment Operator or an Affiliate-Transportation of any one of them unless that cost was incurred:
    - (i) for an office located in Newfoundland and Labrador, or
    - (ii) for a person working in Newfoundland and Labrador;
  - (c) Royalty Share PL1001, Royalty Share EL1093/PL1005, taxes based upon revenue, income or profit and payments made under Part IX of the Excise Tax Act, R.S., 1985, c.E-15, or Penalties or interest relating to any of the foregoing;
  - (d) a payment on account of an overriding royalty, a net profits interest, a carried interest or other similar interest, including but not limited to a payment made pursuant to the Net Profits Interest Agreement dated 10 November 1990 and the Incidental Net Profits Interest Agreement dated 10 November 1990, as those agreements may be amended from time to time;

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- (e) a payment made to purchase an interest in a transportation or transshipment asset that has previously been used to transport or tranship oil produced in the Offshore Area;
- (f) marketing costs;
- (g) a mark-up by a Project Owner, the Resource Project Operator, the Unit Operator, the GBS Operator, the Tanker Administrators, the Tanker Cost Aggregator, or the Transshipment Operator of the charges of a third party;
- (h) a cost, fine or penalty that results from a conviction for an act or omission that is a breach of an applicable law, rule or regulation of a government or government agency;
- (i) a cost that arises from a dispute between interest holders, which includes but is not limited to the Project Owners, of a lease or license in the Offshore Area;
- (j) costs resulting from wilful and deliberate misconduct or gross negligence of management or supervisory personnel of a Project Owner, the Resource Project Operator, the Unit Operator, the GBS Operator, the Tanker Administrators, the Tanker Cost Aggregator, the Transshipment Operator, a third party contractor or a combination of them;
- (k) a fee or expense of dispute resolution, including arbitration or litigation of a dispute with the Crown in connection with a matter related to Royalty Share PL1001 or Royalty Share EL1093/PL1005 payable or paid to the Crown in relation to PL1001, PL1005 or EL1093;
- (l) any fees paid or costs incurred in relation to the negotiation, preparation and execution of this Agreement;
- (m) costs incurred as a result of damage to the environment;
- (n) depletion, depreciation or a similar or notional allowance except as specifically permitted pursuant to Articles 8 and 9;
- (o) on account of a funded or non-funded reserve except as specifically permitted under the Royalty Agreements;
- (p) direct costs of purchasing, leasing or renting land or a building not located in Newfoundland and Labrador or the Offshore Area;
- (q) premiums for insurance that provides coverage for costs that would not qualify as an Eligible Transportation Cost, except premiums paid for insurance:
  - (i) providing coverage against costs incurred in respect of matters described in clauses 4.1(j) and (m), or
  - (ii) that is considered to provide coverage in excess of the coverage available in a reserve permitted under the Royalty Agreements;
- (r) a cost incurred by the Project Owner relative to the use of transshipment facilities other than those costs permitted pursuant to Article 15, unless the Province consents thereto in writing ;
- (s) costs in respect of research and development;
- (t) a cost to the extent that there is
  - (i) a credit or discount that is intended to reduce or offset that cost, and
  - (ii) economic assistance to a Project Owner or an Affiliate-Transportation of that Project Owner intended to reduce or offset their costs;
- (u) a cost or payment arising in relation to a transaction that is entered into to hedge price risk with respect to a commodity or money; and

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(v) an amount on account of, in lieu of, in satisfaction of or in substitution for a cost in clauses 4.1(a)-(u).

## ARTICLE 5 Eligible Transportation Costs Calculation

5.1 Eligible Transportation Costs for a Project Owner are:

(a) the sum of that Project Owner's share of

(i) Eligible Tanker Costs,

(ii) Eligible Transshipment Costs, and

(iii) Eligible Other Transportation Costs; and

(b) reduced by that Project Owner's share of Incidental Transportation Revenue.

## ARTICLE 6

### Tanker Classification

6.1 Each tanker used to transport Hibernia Blend shall be classified as only one of the following five types, and such classification shall apply to all Project Owners:

- (a) Owned Shuttle Tanker;
- (b) Capital Lease Shuttle Tanker;
- (c) Operating Lease Shuttle Tanker ;
- (d) Second Leg Tanker; and
- (e) Temporary Replacement Tanker.

6.2 A leased Shuttle Tanker shall be classified, for the purpose of Eligible Transportation Costs, as either a Capital Lease Shuttle Tanker or an Operating Lease Shuttle Tanker in accordance with GAAP – Transportation. The Project Owners shall inform the Province of their classification within thirty (30) days of the later of the execution of such lease or the signing of this Agreement, and if the Province does not agree with that classification, the Province will determine the classification of such Shuttle Tanker. The Project Owners may dispute the Province's decision through arbitration pursuant to this Agreement. During any period of dispute all payment of Royalty Share PL1001 or Royalty Share EL1093/PL1005 shall occur pursuant to the Province's classification.

6.3 For greater certainty, the Mattea shall be classified as a Capital Lease Shuttle Tanker, the Kometik shall be classified as an Owned Shuttle Tanker, and the Vinland shall be classified as an Operating Lease Shuttle Tanker.

## **ARTICLE 7**

### **Eligible Tanker Costs Calculation**

7.1 For a Project Owner in respect of each Month or Period, the Eligible Tanker Costs shall be the sum of the following:

- (a) Owned Shuttle Tanker Costs;
- (b) Capital Lease Shuttle Tanker Costs;
- (c) Operating Lease Shuttle Tanker Costs;

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- (d) Second Leg Tanker Costs; and
- (e) Temporary Replacement Tanker Costs.

## ARTICLE 8

### Owned Shuttle Tanker Costs

- 8.1 Owned Shuttle Tanker Costs shall be those costs which satisfy the cost eligibility requirements in subclauses 3.1(a), (c), and (d) and are determined in accordance with clauses 8.2 – 8.10.
- 8.2 Owned Shuttle Tanker Costs shall be the sum of Owned Shuttle Tanker operating costs, Owned Shuttle Tanker capital depreciation and Owned Shuttle Tanker return on capital costs, all as set out in clauses 8.3 – 8.10, calculated on an annual basis.
- 8.3 Owned Shuttle Tanker operating costs directly related to operating a tanker, including but not limited to tanker fuel costs and tanker crew costs, shall be recognized as incurred, subject to the Arm's Length Rule - Transportation, with an uplift of ten per cent (10%).
- 8.4 Owned Shuttle Tanker capital depreciation shall be calculated based on the initial capital cost of the tanker plus any eligible additional capital costs for that tanker, depreciated on a straight line basis over the remaining useful life of such tanker.
- 8.5 The initial capital cost of each Owned Shuttle Tanker shall be calculated as follows:
  - (a) for the Kometik, the undepreciated capital cost at July 1, 2009 being thirty two million six hundred seventy three thousand two hundred sixty seven dollars (\$32,673,267.00);
  - (b) for New Tankers, the capital cost of the tanker shall be the cost of the tanker as constructed including the capital portion of any costs actually incurred by the Project Owners in respect of a project team (meaning costs associated with a project team of employees and contractors that a Project Owner who has an ownership interest in such New Tanker puts in place to oversee the construction of the tanker, including project management, technical expertise, and directly related support personnel), positioning, testing, and mobilizing the New Tanker to the Offshore Area, and otherwise preparing the tanker for service, including duty paid on such New Tanker, all such costs being subject to the Arm's Length Rule - Transportation, plus an uplift of one per cent (1%);
  - (c) notwithstanding clause 4.1(e), for tankers other than the Kometik and New Tankers, subject to item (d), the capital cost of the tanker shall be the fair market value of the tanker, as determined by an independent appraiser of tankers satisfactory to the Province, acting reasonably, including duty paid on such tanker, depreciated over the remaining useful life of the tanker, plus an uplift of one per cent (1%); and
  - (d) notwithstanding item (c), if a tanker has previously been used in the Offshore Area, to the extent that the tanker's capital cost has already been deducted against royalty in another lease in the Offshore Area, there shall be no deduction of any capital costs already deducted in the royalty calculation for that other lease. The capital cost of the tanker applicable as per this item (d) shall be the amount of the undepreciated capital costs (excluding any uplifts in the other royalty regime) of the previously used tanker in relation to royalty calculations under another lease plus an uplift of 1%. Notwithstanding the foregoing, if there is a deemed disposition under the royalty regime applicable to that other lease, the capital cost of the tanker shall be the value of such deemed disposition if such value is taken into account in calculating incidental transportation revenue in the royalty regime applicable to that other lease plus an uplift of one per cent (1%) (excluding any uplifts in the other royalty regime).

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- 8.6 Capital additions to an Owned Shuttle Tanker shall be added to the undepreciated capital cost of that tanker subject to the Arm's Length Rule - Transportation, plus an uplift of one per cent (1%), and the useful life of that tanker shall be adjusted in accordance with GAAP - Transportation.
- 8.7 The remaining useful life of an Owned Shuttle Tanker shall be determined by an independent appraiser of tankers satisfactory to the Province or as otherwise agreed with the Province.
- 8.8 Notwithstanding clause 8.7, the remaining useful life of the Kometik as of July 1, 2009 shall be twelve (12) years.
- 8.9 A cost calculated under this Article 8 shall not be disqualified solely because it is a cost for depletion, depreciation, or a similar or notional allowance.
- 8.10 The Owned Shuttle Tanker return on capital costs shall be calculated annually as eight per cent (8%) on the undepreciated capital cost balance at mid-year, exclusive of any uplift.

#### **ARTICLE 9** **Capital Lease Shuttle Tankers Costs**

- 9.1 Capital Lease Shuttle Tanker Costs shall be those costs which satisfy the cost eligibility requirements in subclauses 3.1(a), (c), and (d) and are determined in accordance with clauses 9.2 - 9.11.
- 9.2 Capital Lease Shuttle Tanker Costs shall be the sum of Capital Lease Shuttle Tanker operating costs, Capital Lease Shuttle Tanker capital depreciation and a Capital Lease Shuttle Tanker return on capital costs pursuant to clauses 9.3 - 9.11, calculated on an annual basis.
- 9.3 Capital Lease Shuttle Tanker operating costs directly related to operating the tanker, including but not limited to tanker fuel costs and tanker crew costs, shall be recognized as incurred, subject to the Arm's Length Rule - Transportation, with an uplift of ten per cent (10%).
- 9.4 Capital Lease Shuttle Tanker capital depreciation shall be calculated based on the initial capital cost of the tanker plus any eligible additional capital costs for that tanker, depreciated on a straight line basis over the remaining useful life of such tanker.
- 9.5 The initial capital cost of each Capital Lease Shuttle Tanker shall be calculated as follows:
  - (a) For the Mattea, the undepreciated capital cost at July 1, 2009 being thirty two million six hundred seventy three thousand two hundred sixty seven dollars (\$32,673,267.00); and
  - (b) For Capital Lease Shuttle Tankers other than the Mattea, the capital cost of the tanker shall be the fair market value of the tanker at the time of lease commencement, as determined by an independent appraiser satisfactory to the Province, or as otherwise agreed with the Province, including duty paid on such tanker, plus an uplift of one per cent (1%).
- 9.6 Capital additions to a Capital Lease Shuttle Tanker shall be added to the undepreciated capital cost of that tanker subject to the Arm's Length Rule-Transportation, plus an uplift of one per cent (1%), and the useful life of that tanker shall be adjusted in accordance with GAAP - Transportation.
- 9.7 The remaining useful life of a Capital Lease Shuttle Tanker shall be determined by an independent appraiser of tankers satisfactory to the Province or as otherwise agreed with the Province.

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- 9.8 Notwithstanding clause 9.7, the remaining useful life of the Mattea as of July 1, 2009 is twelve (12) years.
- 9.9 A cost calculated under this Article 9 shall not be disqualified solely because it is a cost for depletion, depreciation, or a similar or notional allowance.
- 9.10 The Capital Lease Shuttle Tanker return on capital costs shall be calculated annually as eight per cent (8%) of the undepreciated capital cost balance at midyear, exclusive of any uplift.
- 9.11 Within six months of the first use of a Shuttle Tanker which is categorized as a Capital Lease Shuttle Tanker to move Hibernia Blend, the Province may elect to treat that Capital Lease Shuttle Tanker as an Operating Lease Shuttle Tanker for the purposes of determining transportation cost eligibility. Such election shall apply for the life of the tanker unless otherwise agreed by the parties or if requested by one or more of the Project Owners and approved by the Province.

#### **ARTICLE 10** **Operating Lease Shuttle Tankers Costs**

- 10.1 Operating Lease Shuttle Tanker Costs are those costs which satisfy the cost eligibility requirements in subclauses 3.1(a), (c), and (d) and are determined by clauses 10.2-10.7.
- 10.2 Notwithstanding the Arm's Length Rule - Transportation, where a lease for an Operating Lease Shuttle Tanker results from a Competitive Tender Process, the Eligible Transportation Cost for that tanker shall be:
  - (a) the amounts paid pursuant to the terms of the lease for the Operating Lease Shuttle Tanker; and
  - (b) operating costs directly related to operating such tanker, including but not limited to tanker fuel costs and tanker crew costs;as incurred, without any uplifts.
- 10.3 Clauses 4.1(a) and 4.1(n) shall not apply to Operating Lease Shuttle Tanker Costs in subclause 10.2(a).
- 10.4 Where a lease for an Operating Lease Shuttle Tanker is entered into pursuant to a Competitive Tender Process and the successful bidder as a result of such a process is not at Arm's Length-Transportation to all Project Owners then the Eligible Tanker Costs shall be determined in accordance with clause 10.2 unless, upon review, the Province determines that the contract was not the result of a Competitive Tender Process, in which case clause 10.5 shall apply.
- 10.5 Where the award of a contract for an Operating Lease Shuttle Tanker was not pursuant to a Competitive Tender Process, the Eligible Tanker Costs shall be determined in accordance with Article 9 as though the vessel is a Capital Lease Shuttle Tanker, unless the Province approves the deduction of costs in accordance with clause 10.2.
- 10.6 The costs incurred by a Tanker Administrator directly related to administering an Operating Lease Shuttle Tanker shall be included in Operating Lease Shuttle Tanker Costs provided such costs satisfy the cost eligibility requirements in subclauses 3.1(a), (c) and (d), without any uplifts.
- 10.7 A cost calculated under this Article 10 shall not be disqualified solely because it is a cost for depletion, depreciation, or a similar or notional allowance.

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**ARTICLE 11**  
**Second Leg Tanker Costs**

- 11.1** Second Leg Tanker Costs are those costs that satisfy the cost eligibility requirements in Article 3 and are determined pursuant to clauses 11.2 – 11.4.
- 11.2** Where the Second Leg Tanker has been contracted from a Person at Arm's Length-Transportation to all Project Owners and Affiliates-Transportation of Project Owners, then the Second Leg Tanker Costs are the actual costs incurred, and shall not be eligible for any uplifts.
- 11.3** Where the Second Leg Tanker has not been contracted from a Person at Arm's Length-Transportation to all Project Owners and Affiliates-Transportation of Project Owners, the Second Leg Tanker Costs shall be determined according to the Arm's Length Rule - Transportation, and shall not be eligible for any uplifts.
- 11.4** Clauses 4.1(a) and 4.1(n) shall not apply to Second Leg Tanker Costs in this Article 11.

**ARTICLE 12**  
**Temporary Replacement Tanker Costs**

- 12.1** Temporary Replacement Tanker Costs are those costs that satisfy the cost eligibility requirements in Article 3(a), (c), and (d) and are determined pursuant to clauses 12.2-12.5.
- 12.2** Where the Temporary Replacement Tanker has been contracted from a Person at Arm's Length-Transportation to all Project Owners and Affiliates-Transportation of Project Owners, then the Temporary Replacement Tanker Costs shall be the actual costs incurred by the Project Owners leasing the Temporary Replacement Tanker, and shall not be eligible for any uplifts.
- 12.3** Where the Temporary Replacement Tanker has not been contracted from a Person at Arm's Length-Transportation to all Project Owners and Affiliates-Transportation of Project Owners, the Temporary Replacement Tanker Costs shall be the lesser of the actual costs incurred by the Project Owners leasing the Temporary Replacement Tanker or the fair market value thereof where "fair market value" shall be the value based on transactions occurring in comparable open markets among Persons who are not Affiliates-Transportation, and shall not be eligible for any uplifts.
- 12.4** Temporary Replacement Tanker Costs to the Project Owners collectively in relation to transportation of Hibernia Blend on an annual basis shall be calculated as follows:
  - (a) The allocation of costs relating to the transportation of Hibernia Blend shall be the result of the formula  $(A/B) \times C$  where:
    - A = Hibernia Blend Tanker Days
    - B = Total Used Tanker Days
    - C = The Temporary Replacement Tanker Costs incurred in a Period in relation to the Total Used Tanker Days.
- 12.5** Clauses 4.1(a) and 4.1(n) shall not apply to Temporary Replacement Tanker Costs in this Article 12.

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**ARTICLE 13**  
**Allocation of Shuttle Tanker Costs to Hibernia Blend**

13.1 Eligible Tanker Costs of a Shuttle Tanker to the Project Owners collectively in relation to transportation of Hibernia Blend on an annual basis shall be calculated as follows:

(a) The allocation of costs relating to the transportation of Hibernia Blend shall be the result of the formula  $(A/B) \times C$  where:

A = Hibernia Blend Tanker Days

B = Total Used Tanker Days

C = The annual Eligible Tanker Cost for that Shuttle Tanker;

13.2 The Eligible Tanker Costs of a Shuttle Tanker while it is out of service for repairs or maintenance shall be allocated in accordance with the formula in clause 13.1 taking into account the usage of that Shuttle Tanker in the 12 Months immediately preceding the start of the Month in which that Shuttle Tanker went out of service. This proportionate allocation of costs shall continue until the earlier of that tanker returning to service or 12 Months from the date that tanker went out of service.

13.3 In a Period in which a Shuttle Tanker is out of service, the "A" and "B" variables in the formula in clause 13.1 shall not include days when the Shuttle Tanker is out of service, during which the costs for such days shall be allocated instead in accordance with clause 13.2.

13.4 Notwithstanding clauses 13.2 and 13.3, there shall be no allocation of costs of a Shuttle Tanker while it is out of service for repairs or maintenance where the primary purpose of those repairs or maintenance is the modification of the Shuttle Tanker for use relating to Non-NL Tanker Days.

**ARTICLE 14**  
**Allocation of Tanker Costs and Incidental Transportation Revenue Among Project Owners**

14.1 The Project Owners and the Tanker Administrators shall each provide a detailed report of all Eligible Tanker Costs and Incidental Transportation Revenue to a third party selected by the Project Owners who shall aggregate such tanker costs (the "Tanker Cost Aggregator").

14.2 The Project Owners shall designate a Tanker Cost Aggregator within thirty (30) days of the date of this Agreement.

14.3 For Eligible Tanker Costs and Incidental Transportation Revenue the Tanker Cost Aggregator shall allocate such costs and revenues to each Project Owner pursuant to an allocation agreement for the purposes of calculating Royalty Share (the "Transportation Allocation Agreement"). The Transportation Allocation Agreement:

(a) shall be agreed to by the Project Owners and approved by the Province and a certified executed copy thereof delivered to the Province, prior to execution of this Agreement;

(b) shall include an allocation formula for costs which shall be reasonable and aligned with the Project Owners' costs, tanker ownership, contract ownership, usage, and capacity in the asset; and

(c) shall provide for an allocation formula in respect of Incidental Transportation Revenue which shall be reasonable and aligned with the Project Owners' costs, tanker ownership, usage, and capacity in the asset, but does not have to be the same as the allocation formula in subclause 14.3(b).

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- 14.4 The Tanker Cost Aggregator shall provide to the Province, on a monthly and annual basis, a detailed reconciliation as prescribed by the Province of the aggregated Eligible Tanker Costs and Incidental Transportation Revenues reported to them by the Project Owners and Tanker Administrators and the allocation of such costs and revenues to the Project Owners.
- 14.5 Any subsequent changes to the Transportation Allocation Agreement shall require the Province's consent thereto in writing and a certified executed copy of such revised Transportation Allocation Agreement or amending agreement delivered to the Province before such changes shall have effect for the purposes of allocation of Eligible Tanker Costs and Incidental Transportation Revenue under this Schedule.

#### **ARTICLE 15** **Eligible Transshipment Cost Calculations**

- 15.1 In order for a cost to qualify as an Eligible Transshipment Cost, such cost must be for the use of the Whiffen Head Transshipment Terminal for transshipment of Hibernia Blend.
- 15.2 Eligible Transshipment Costs are those costs which satisfy the cost eligibility requirements in subclauses 3.1(a)-(c) and are determined in accordance with this Article 15.
- 15.3 Eligible Transshipment Costs are not eligible for uplifts.
- 15.4 Subject to clauses 15.1, 15.2 and 15.3, in each Month in a Period, Eligible Transshipment Costs for a Project Owner who is not a Transshipment Terminal Owner shall be the actual amount paid by that Project Owner to the Whiffen Head Transshipment Terminal for the transshipment of Hibernia Blend in the Month.
- 15.5 Subject to clauses 15.1, 15.2 and 15.3, in each Month in a Period, Eligible Transshipment Costs for a Transshipment Terminal Owner shall be the actual amount paid by that Transshipment Terminal Owner to the Whiffen Head Transshipment Terminal for the transshipment of Hibernia Blend in the Month, reduced by that Transshipment Terminal Owner's Individual ROCC Reduction for the Month.
- 15.6 For a Transshipment Terminal Owner, the Individual ROCC Reduction for each Month shall initially be the estimated allocation of the Individual ROCC Reduction in the Period pursuant to subclause 15.7(e) divided by 12. At the end of each Period, each Transshipment Terminal Owner shall recalculate its Individual ROCC Reduction for each Month based on the actual Individual ROCC Reduction for the Period pursuant to subclause 15.7(d) divided by 12.
- 15.7 For a Transshipment Terminal Owner, the Individual ROCC Reduction for each Period shall be calculated as follows:
  - (a) First, at the end of each Period, the Transshipment Operator shall determine the amount of the total ROCC Reduction for the use of the Whiffen Head Transshipment Terminal in the Period ("Total ROCC Reduction"), which amount shall be calculated as follows:

Total ROCC Reduction = A - [CC x 0.06]

where

    - (i) "A" is the after-tax profit on the audited financial statements for the Period for the Whiffen Head Transshipment Terminal, and
    - (ii) "CC" is the total contributed capital which is the value of the share capital issued and outstanding as reported on the annual audited financial statements for the Whiffen Head Transshipment Terminal.

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(b) Second, the Transshipment Operator shall determine the portion of the Total ROCC Reduction relating to the transshipment of Hibernia Blend ("Hibernia ROCC Reduction"), which shall be calculated as follows:

Hibernia ROCC Reduction = (Total ROCC Reduction) \* (x + w) / ( $\sum$  storage charge and berth charge)

where "x" is the storage charge billed that relates to the usage of the Whiffen Head Transshipment Terminal for the storage based on allocated tank capacity to maintain Hibernia Blend segregation expressed in barrel hours for the transshipment of Hibernia Blend, and

"w" is the berth charge billed that relates to usage of the Whiffen Head Transshipment Terminal for the berth in berth hours for the transshipment of Hibernia Blend.

(c) Third, the Transshipment Operator shall determine the portion of the Hibernia ROCC Reduction relating to the Transshipment Terminal Owners in the aggregate ("Aggregate ROCC Reduction"), which shall be calculated as follows:

Aggregate ROCC Reduction = (Hibernia ROCC Reduction) \* (y%)

where "y%" is the aggregate percentage shareholder interest in Newfoundland Transshipment Limited held by all Transshipment Terminal Owners in the Period.

(d) Fourth, the Transshipment Operator shall allocate to each Transshipment Terminal Owner, its individual share of the Aggregate ROCC Reduction ("Individual ROCC Reduction"), which shall be calculated as follows:

Individual ROCC Reduction = (Aggregate ROCC Reduction) \* (z%)

where "z%" is the allocation percentage for each Transshipment Terminal Owner as set out in the Transshipment Allocation Agreement.

(e) For purposes of initially calculating the allocation of the ROCC Reduction for each Month in subclause 15.6, at the commencement of a Period, the Transshipment Operator shall provide each Transshipment Terminal Owner with an estimate of its Individual ROCC Reduction for that Period.

15.8 A cost calculated under clauses 15.4 or 15.5 shall not be disqualified solely because it is a cost for depletion, depreciation, or a similar or notional cost.

## ARTICLE 16 Transshipment Agreements

16.1 Within 60 days of the date of this Agreement, the Transshipment Terminal Owners shall provide the Province with a single executed agreement how that portion of Aggregate ROCC Reduction will be allocated among Transshipment Terminal Owners (the "Transshipment Allocation Agreement"). The Transshipment Allocation Agreement shall be reasonable and provides for allocations among Transshipment Terminal Owners that are aligned with the

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Transshipment Terminal Owners' costs, ownership contract ownership, usage, or capacity in the transhipment facility.

- 16.2 Any subsequent change to the Transshipment Allocation Agreement shall not be effective for the purposes of calculation of Royalty Share unless agreed in writing by the Province.
- 16.3 The Project Owners hereto acknowledge that this Article 16 and Article 15 have been agreed to by the Province premised upon the current generic transhipment terminal capacity reservation agreements, general terms and conditions of service, and shareholders' agreements/arrangements methodology to determine customer costs for the Whiffen Head Transshipment Terminal (the "Transshipment Terminal Agreements").
- 16.4 In the event of any amendment or additions to the Transshipment Terminal Agreements the Project Owners shall notify the Province of any such amendments or additions.
- 16.5 Regardless of such amendments or additions to the Transshipment Terminal Agreements:
  - (a) the Project Owners shall only be permitted to deduct an amount that would be equivalent to the amount calculated if the current Whiffen Head Transshipment Terminal capacity reservation agreements (acknowledging there may be changes in the nominated capacities), terms and conditions of service, and shareholders agreements/arrangements remained in place and Project Owners were invoiced according to that agreement; and
  - (b) the continuation of the basic business operations of the Whiffen Head Transshipment Terminal for the transhipment and storage of Crude Oil, which shall not include the transportation of Crude Oil.
- 16.6 Costs of the operator of the Whiffen Head Transshipment Terminal included in the amount charged to the Project Owners shall be in compliance with the Transshipment Terminal Agreements and with GAAP - Transportation, and with general reasonable business practices.
- 16.7 The Transshipment Terminal Owners shall ensure the facility is operated on an open access basis with the terms and conditions of service applying on a non-discriminatory basis to all potential users.
- 16.8 The Transshipment Terminal Owners represent and warrant to the Province that the Transshipment Terminal Agreements which they have provided contain current and complete terms and conditions of service and methodology used in determining the transhipment fees and rate of return, as contemplated in Articles 15 and 16. The Project Owners acknowledge that the Province's agreement to Articles 15 and 16 is made in reliance upon the Transshipment Terminal Agreements and this representation and warranty.

#### **ARTICLE 17** **Eligible Other Transportation Costs**

- 17.1 A cost shall qualify as an Eligible Other Transportation Cost provided it satisfies each of the following requirements:
  - (a) it satisfies each of the cost eligibility requirements in Article 3;
  - (b) it is an operating cost under GAAP - Transportation; and
  - (c) it is not an Eligible Tanker Cost or an Eligible Transshipment Cost.

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- 17.2 Subject to clause 17.1, Eligible Other Transportation Costs include, but are not limited to: demurrage, port fees, tug and piloting fees and lightering costs in relation to transporting Hibernia Blend.
- 17.3 Eligible Other Transportation Costs are subject to the Arm's Length Rule - Transportation and are not eligible for uplifts.

#### **ARTICLE 18** **Allocation of Transportation Costs Among License Areas**

- 18.1 For each Month during the Post-Transition Period, each Project Owner shall allocate its Eligible Transportation Costs in respect of the transportation of Hibernia Blend between PL1001 and EL1093/PL1005 in the same proportion as the volume of Hibernia Blend sold for such Project Owner for such Month is allocated between PL1001 and EL1093/PL1005 in accordance with the sales volume allocation provisions as set out under clause 21.3 of the Agreement.
- 18.2 Such allocation to PL1001 shall be the Eligible Transportation Costs Deduction PL1001 for the purposes of determinations and calculations made by or on behalf of a Project Owner or the Project Owners and redeterminations and recalculations by the Province under the PL1001 Royalty Agreement.
- 18.3 Such allocation to EL1093/PL1005 shall be the Eligible Transportation Costs Deduction EL1093/PL1005 for the purposes of determinations and calculations made by or on behalf of a Project Owner or the Project Owners and redeterminations and recalculations by the Province under the EL1093/PL1005 Royalty Agreement.

#### **ARTICLE 19** **Incidental Transportation Revenue**

- 19.1 When a Shuttle Tanker or Temporary Replacement Tanker is used as a Profitable Outcharter, revenue therefrom shall be Incidental Transportation Revenue to a Project Owner as calculated in clauses 19.2 and 19.3.
- 19.2 Incidental Transportation Revenue is the amount (if any) by which (i) an eligible deduction as a royalty transportation cost under any other lease in the Offshore Area for which oil is transported under a Profitable Outcharter is greater than (ii) the amount that would have been an Eligible Transportation Cost for the use of that same Shuttle Tanker or Temporary Replacement Tanker in that same time period by the Project Owners in relation to transportation of Hibernia Blend.
- 19.3 Allocation of Incidental Transportation Revenue for a Shuttle Tanker or Temporary Replacement Tanker to the Project Owners on an annual basis shall be in accordance with the Transportation Allocation Agreement. Such Incidental Transportation Revenue shall be allocated based on the following formula:
  - (a)  $(A / C) \times ITR$

Where:

ITR = Incidental Transportation Revenue

A = Hibernia Blend Tanker Days

B = Total Used Tanker Days

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C = B - Non-NL Tanker Days - days used as a Profitable Outcharter in another lease.

(b) The Incidental Transportation Revenue calculated in accordance with clause 19.3 shall then be allocated between PL1001 and EL1093/PL1005 pursuant to clause 18 of this Schedule.

19.4 In a month in which Eligible Transportation Costs calculated for a Project Owner are negative, Eligible Transportation Costs for that month shall be zero dollars (\$0) and the calculated amount which was less than zero dollars (\$0) shall be carried forward and applied against Eligible Transportation Costs in the following month.

19.5 An amount paid or received by a Project Owner to or from another Project Owner in respect of a transportation asset that represents the settlement of accounts between or among the Project Owners to adjust for the usage of the transportation asset for the transportation of Hibernia Blend if any, for each such amount paid by a Project Owner, there is a contemporaneous and corresponding receipt of an equal amount by another Project Owner shall not give rise to Incidental Transportation Revenue or an Eligible Transportation Cost.

## ARTICLE 20

### Audit Rights

20.1 The Project Owners shall identify a Project Owner or a third party to be the Tanker Administrator for each Shuttle Tanker and Temporary Replacement Tanker on or before the later of the date of the Agreement or the date the tanker became available to transport Hibernia Blend.

20.2 In addition to audit rights set out in the Agreement and the applicable Royalty Regulations identified in Article 2 of the Agreement, the Project Owners shall ensure their contractual arrangements entered into after the date of the Agreement with respect to the transportation and transhipment of Hibernia Blend acknowledge and facilitate comprehensive audit rights for the Province solely for the purposes of the determination, calculation and allocation of Eligible Transportation Costs for the Project Owners pursuant to the Agreement, including but not limited to comprehensive audit rights (including over the Competitive Tender Process for tanker procurement) as follows:

- (a) For Owned Shuttle Tankers: Project Owners and Tanker Administrators;
- (b) For Capital Lease Shuttle Tankers: Project Owners and Tanker Administrators;
- (c) For transhipment costs: Project Owners and Transhipment Operator;
- (d) For Operating Lease Shuttle Tankers: Project Owners and Tanker Administrators;
- (e) For all Shuttle Tankers: the Tanker Cost Aggregator; and
- (f) For Temporary Replacement Tankers: Project Owners, Tanker Administrator and, if applicable, Tanker Cost Aggregator.

20.3 For any existing contractual arrangements as of the date of the Agreement with respect to the transportation and transhipment of Hibernia Blend, the Project Owners shall make all reasonable efforts to ensure the Province is provided comprehensive audit rights from the other parties to those contractual arrangements listed in subclause 20.2(a)-(f) as are enjoyed by the Project Owners, as if the Province had originally been a party to the contractual arrangement. Where such contractual arrangements are subsequently amended or revised, the Project Owners shall ensure that the Province receives the same comprehensive audit rights as for new contractual arrangements under clause 20.2.

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20.4 Where such existing contractual arrangements under 20.3 cannot provide the Province audit rights in accordance with clause 20.2 and clause 20.3, the Project Owners shall endeavour to secure equivalent audit rights for a third party auditor selected by the Province and, failing that, the Project Owners shall exercise their own audit rights to address the Province's concerns.

20.5 Without restricting the generality of clauses 20.2, 20.3 and 20.4, the Transshipment Owners shall provide the following information to the Province with respect to the Whiffen Head Transshipment Terminal on an annual basis:

- (a) a certification by Newfoundland Transshipment Limited stating that there have been no changes to the Reserved Capacity Services Agreement, the Unanimous Shareholder Agreement or the Newfoundland Transshipment Facility Second Amended and Restated General Terms and Conditions of Service in the year;
- (b) a certification by Newfoundland Transshipment Limited stating that all services and billings in that year have been in accordance with the agreements listed in item (a);
- (c) a copy of the Audited Financial Statements for Newfoundland Transshipment Limited accompanied by the Auditor's Report on the Audited Financial Statements;
- (d) a copy of the Audited Final Adjustment Calculations, accompanied by the Auditor's Report on the Audited Final Adjustment Calculations; and
- (e) a statement reconciling the total revenue of Newfoundland Transshipment Limited to the amounts paid by each individual shareholder of Newfoundland Transshipment Limited.

20.6 Where, in the opinion of the Province, the result of an action, agreement, allocation, arrangement, transaction or operation in respect of Eligible Transportation Costs artificially or unduly reduces the amount of the Royalty Share PL1001 or Royalty Share EL1093/PL1005, such Royalty Share shall be calculated as if the action, agreement, allocation, arrangement, transaction or operation had not occurred or had occurred at fair market value between parties dealing at Arm's Length-Transportation. If a Project Owner disagrees with a calculation and the disagreement is not resolved by discussions with the Province, the calculation may be submitted to arbitration in order to determine the extent, if any, by which such Royalty Share or value thereof has been artificially reduced by the act, allocation, arrangement, transaction or operation and royalty share or value thereof will be adjusted accordingly.

## ARTICLE 21

### Reporting and Accounts

21.1 The Project Owners, the Tanker Cost Aggregator, Tanker Administrators and Transshipment Operator shall report Eligible Transportation Costs on a monthly and annual basis as prescribed by the Province.

21.2 The Project Owners who have contracted with a Tanker Administrator shall cause that Tanker Administrator to maintain in Newfoundland and Labrador separate accounts recording all costs and charges relating to the transportation of Hibernia Blend. Such Project Owners shall also cause each such Tanker Administrator to maintain in Newfoundland and Labrador such accounting, financial and any other reporting systems as are necessary for the purposes of this Article and elsewhere in the Agreement.

21.3 The Project Owners shall cause the Tanker Cost Aggregator to maintain in Newfoundland and Labrador separate accounts recording all costs, charges and allocations relating to the

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transportation of Hibernia Blend pursuant to this Article and elsewhere in the Agreement. The Project Owners shall also cause the Tanker Cost Aggregator to maintain in Newfoundland and Labrador such accounting, financial and any other reporting systems as are necessary for the purposes of this Article and elsewhere in the Agreement.

21.4 The Project Owners shall cause the Transshipment Operator to maintain in Newfoundland and Labrador separate accounts recording all costs and charges relating to the transshipment and allocation of Hibernia Blend pursuant to this Article and elsewhere in the Agreement. The Project Owners shall also cause the Transshipment Operator to maintain in Newfoundland and Labrador such accounting, financial and any other reporting systems as are necessary for the purposes of this Article and elsewhere in the Agreement.

**ARTICLE 22**  
**Remedies**

22.1 Claims for transportation costs and transhipment costs in respect of Hibernia Blend which are not in compliance with the Agreement and this Schedule may be disallowed by the Province without any requirement on the Province, under this Schedule, the Agreement or the Royalty Agreements, to provide alternate calculations of the Eligible Transportation Costs.

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## **SCHEDULE F ARBITRATION**

### **ARTICLE 1 Arbitration**

#### **1.1 Submission to Arbitration by Notice under Fiscal Agreements**

Any disagreement among the parties to any of the Fiscal Agreements as regards any matter expressly allowed in the Fiscal Agreements to be submitted to arbitration and which cannot be resolved by discussions among the parties thereto involved in or affected by the disagreement may be submitted to arbitration by any party thereto by written notice to all other parties thereto involved in or affected by the disagreement. With respect to any matter expressly allowed in the Fiscal Agreements to be submitted to arbitration, resort shall be had first to arbitration and no right of action in any judicial proceedings shall or may arise until the first to occur of any arbitration with respect to the disagreement has been taken and concluded as provided for herein or the time within which the disagreement may be submitted to arbitration pursuant to the applicable Fiscal Agreement has expired. Disagreements may only be submitted to arbitration within the time provided therefore in the applicable Fiscal Agreement or, if no such time is provided therein, within six (6) Months of a party thereto having received notice from another party thereto that the disagreement cannot be resolved by discussions among the parties thereto involved in or affected by the disagreement.

#### **1.2 Governing Arbitration Code**

Each arbitration pursuant to the Fiscal Agreements shall be conducted pursuant to the Arbitration Code.

#### **1.3 Agreements re Arbitration Code**

The parties to the Fiscal Agreements make the following agreements with respect to the Arbitration Code:

- (i) Article 3: Notwithstanding the provisions of Article 3 of the Arbitration Code, notices shall be given and deemed received in accordance with the provisions of Article 26 of this Agreement.
- (ii) Article 6: References in Article 6 of the Arbitration Code to the "Federal Court or any superior, county or district court" are amended to read "the Trial Division of the Supreme Court of the Province of Newfoundland and Labrador or, where applicable, any court of appeal therefrom".
- (iii) Article 7: This Schedule shall constitute the "Arbitration agreement" for the purposes of Article 7 of the Arbitration Code.
- (iv) Article 10: For the purposes of Article 10 of the Arbitration Code, the number of arbitrators is determined to be three.
- (v) Arbitration involving issues in dispute common to all Project Owners and Licensees shall be conducted by all Project Owners and Licensees with the Province in one arbitration, unless the resolution of the issue to be arbitrated may involve facts or circumstances specific to any one Project Owner or Licensee including, without limitation, the Sale Price or revenues

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of a Project Owner. If more than one Project Owner or Licensee is involved in an arbitration with the Province, then all Project Owners and Licensees involved shall be regarded as one party to the arbitration and shall have one arbitrator, to be selected by arbitration if the Project Owners and Licensees involved cannot agree, and the Province shall be regarded as the second party to the arbitration and shall have one arbitrator.

- (vi) Except for the matter allowed to be submitted to arbitration pursuant to clause 31A.7 of the PL1001 Royalty Agreement, an arbitration involving issues in dispute common to more than one of the Fiscal Agreements shall be conducted in one arbitration and arbitrators shall determine such issues for all purposes of each such Fiscal Agreement. If more than one Project Owner or Licensee is involved in an arbitration with the Province involving issues in dispute common to more than one of the Fiscal Agreements, then all Project Owners and Licensees involved shall be regarded as one party to the arbitration and shall have one arbitrator, to be selected by arbitration if the Project Owners and Licensees involved cannot agree, and the Province shall be regarded as the second party to the arbitration and shall have one arbitrator.
- (vii) Article 20: Notwithstanding Article 20 of the Arbitration Code, each arbitration pursuant to this Schedule F shall be conducted at St. John's, Newfoundland and Labrador or at such other place as those of the parties to the relevant agreement involved in the particular arbitration may agree.
- (viii) Article 22: It is agreed pursuant to Article 22 of the Arbitration Code that the language used in all arbitral proceedings shall be English.
- (ix) Article 27: References in Article 27 of the Arbitration Code to "a competent court of Canada" are amended to read "the Trial Division of the Supreme Court of the Province of Newfoundland and Labrador or, where applicable, any court of appeal therefrom."
- (x) Article 28: For the purposes of paragraph (1) of Article 28 of the Arbitration Code, the rules of law applicable to any dispute before an arbitral tribunal shall be the laws in effect in the Province at the time the dispute arose. Pursuant to paragraph (3) of Article 28 of the Arbitration Code, the arbitral tribunal is authorized to decide *ex aequo et bono* or as amiable compositeur.
- (xi) Article 34: References in Article 34 of the Arbitration Code to "a court" shall mean "the Trial Division of the Supreme Court of the Province of Newfoundland and Labrador or, where applicable, any court of appeal therefrom".

#### 1.4 Compensation and Costs

The arbitrators shall determine the liability among the parties to any arbitration for the compensation to the arbitrators and the costs of the arbitration. As a general rule, the costs of the arbitration and of the compensation to the arbitrators should be awarded, allocated and be payable commensurate with the relative success of the parties to the arbitration with respect to the merits of the positions advanced in the arbitration. Costs related to an arbitration paid or incurred by any Project Owner shall not be a Resource Project Eligible Cost or an Eligible Transportation Cost under the Fiscal Agreements.

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### **1.5 Coordination with Canada's Arbitrations**

The Province shall give Canada notice and particulars of each arbitration pursuant to the Fiscal Agreements and, in the event that Canada or a Project Owner gives the Province notice that Canada has a similar matter to arbitrate with respect to the Project, the Province and each Project Owner involved in the arbitration pursuant to the Fiscal Agreements shall use all reasonable efforts to have the arbitration pursuant to the Fiscal Agreements and the arbitration with respect to the Project involving Canada conducted reasonably contemporaneously.

### **1.6 Confidentiality**

Prior to the provision of any information hereunder by any party to any arbitrator, such arbitrator shall address, execute and deliver to each party to the arbitration a Confidentiality Declaration.

### **1.7 No Presumption or Onus**

In determining any question referred to them pursuant to the Fiscal Agreements, the arbitrators shall not make any presumption of pre-eminence as to the position of either of the parties nor shall anything contained in the Fiscal Agreements be construed by the arbitrators as imposing any burden of proof or onus on either party as regards the other. No conclusion or presumption shall be drawn and no pre-eminence shall be given by the arbitrators by virtue of the information required or not required to be supplied by a Project Owner pursuant to clause 37.2 of the Royalty Agreements or by the Province pursuant to clause 37.3 of the Royalty Agreements.

### **1.8 Limitation on Arbitrators**

In arbitrations as to only the amount of a Sale Price, the arbitrators shall be limited to awarding as the award of the arbitrators either:

- (i) the initial determination made or the amount initially calculated, allocated or paid by the Project Owner, or
- (ii) the redetermination or the amount recalculated, reallocated or assessed by the Province,

whichever is the closest to what the arbitrators consider correct. The arbitrators shall not propose or make an award or settlement based upon parts only of the two alternatives available to be awarded by the arbitrators.

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## **SCHEDULE G 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)**

### **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 the Parliament of Canada 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 counter-claim, 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

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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.

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## 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 a 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,
  - a) a party fails to act as required under such procedure, or

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- b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
- c) 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.

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## 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,

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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 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

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specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

### Article 23

#### Statement 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.

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## 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 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 or 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 of 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.

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## 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:

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- 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. RE COURSE 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;
    - 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

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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

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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

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**SCHEDULE H**  
**LOCKED PROVISIONS OF THE UNIT OPERATING AGREEMENT**

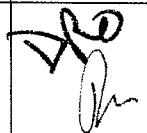
<b>Definitions</b>	<b>Locked Provisions</b>
1.1(5)	Accounting Procedure
1.1(9)	Agreement
1.1(12)	Approved Development Plan
1.1(16)	Associated Agreements
1.1(18)	Authority for Expenditure or AFE
1.1(25)	Board
1.1(26)	Budget
1.1(30)	Capital Costs
1.1(54)	Effective Date
1.1(56)	EL1093
1.1(85)	Hibernia Area
1.1(88)	Hibernia Facilities
1.1(91)	Hibernia Shared Facilities
1.1(93)	HOUSA
1.1(106)	Licence
1.1(112)	Month
1.1(131)	Operating Costs
1.1(140)	Person
1.1(141)	Petroleum Substances
1.1(142)	PL1001
1.1(151)	PL1005
1.1(160)	Project
1.1(161)	Project AFE
1.1(170)	Receipt Point
1.1(181)	Royalty or NPI Default
1.1(185)	Security Package
1.1(193)	Tariff Agreement
1.1(199)	Trustee
1.1(203)	Unit
1.1(204)	Unit Account
1.1(205)	Unit Agreement
1.1(206)	Unit Data
1.1(207)	Unit Facilities
1.1(208)	Unit Interest
1.1(210)	Unit Operating Committee
1.1(211)	Unit Operations
1.1(216)	Unit Property
1.1(228)	Working Interest
1.1(230)	Year

JULY

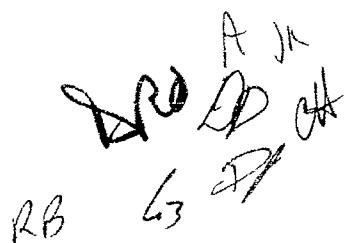
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<b>Clauses</b>	
Article 3	Scope of Agreement
6.1	Ownership
7.1(A)	Representatives
7.3	Authority to Vote
7.14	Vote of Unit Operating Committee Binding
9.1(A)(1)	Conduct of Unit Operations: Control and Management of Unit Operations
9.1(A)(6)	Conduct of Unit Operations: Covenants of Unit Operator
9.2(A)	Compliance by Unit Operator
9.3(A)(3)	Obligations for Unit Operations: Authorization for Expenditure
9.3(A)(12)	Obligations for Unit Operations: Access to Unit Operations
9.3(A)(15)	Obligations for Unit Operations: Payment of Unit Operations
9.5	Records
9.6(A)	General Reporting
17.1(A)	Basis of Charges to the Participants
17.2(B)	Authorities for Expenditure and Changes in Scope
17.2(C)	Overexpenditures
17.6	Audit Rights
18.11	Application of Recovered Amounts
18.15	Royalty or NPI Default
19.2(E)	Other Insurance
Schedule E	Accounting Procedure
Schedule E.1.2	Unit Account Statements
Schedule E.1.2(B)	Expenditures

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PARTY	INITIALS
HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	
EXXONMOBIL CANADA PROPERTIES EXXONMOBIL CANADA LTD. EXXONMOBIL CANADA HIBERNIA COMPANY LTD.	
PETRO-CANADA HIBERNIA PARTNERSHIP SUNCOR ENERGY INC.	
CHEVRON CANADA RESOURCES CHEVRON CANADA LIMITED	
CANADA HIBERNIA HOLDING CORPORATION	
MURPHY ATLANTIC OFFSHORE OIL COMPANY LTD.	
STATOIL CANADA LTD.	
NALCOR ENERGY – OIL AND GAS INC.	

The person initialling is indicating that they have participated in, reviewed and will recommend approval of the document



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