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**PROJECT FINANCING AGREEMENT**

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**between**

**WUSKWATIM POWER LIMITED PARTNERSHIP**

**- and -**

**THE MANITOBA HYDRO-ELECTRIC BOARD**

**DATED June 28, 2006**

# TABLE OF CONTENTS

	<b>Page</b>
<b>Article I INTERPRETATION.....</b>	<b>1</b>
1.1 DEFINED TERMS.....	1
1.2 INTERPRETATION. ....	24
1.3 INTERPRETATION OF ANY OTHER LOAN DOCUMENTS.....	25
1.4 SEVERABILITY. ....	26
1.5 ENTIRE AGREEMENT.....	26
1.6 WAIVER. ....	26
1.7 GOVERNING LAW.....	26
1.8 INCORPORATION OF SCHEDULES. ....	27
1.9 CONFLICTS. ....	27
1.10 ACKNOWLEDGEMENT. ....	27
<b>Article II NON-REVOLVING CREDIT FACILITY.....</b>	<b>28</b>
2.1 NON-REVOLVING CREDIT FACILITY.....	28
2.2 COMMITMENT AND FACILITY LIMIT.....	28
2.3 AVAILABLE ADVANCES.....	29
2.4 USE OF PROCEEDS.....	29
2.5 REPAYMENT.....	29
2.6 MANDATORY PREPAYMENTS AND REPAYMENTS.....	29
2.7 NO OPTIONAL REDUCTIONS. ....	30
<b>Article III REVOLVING CREDIT FACILITY .....</b>	<b>30</b>
3.1 REVOLVING CREDIT FACILITY.....	30
3.2 COMMITMENT AND FACILITY LIMIT.....	31
3.3 AVAILABLE ADVANCES.....	31
3.4 USE OF PROCEEDS.....	31
3.5 REPAYMENT.....	32
3.6 MANDATORY PREPAYMENTS AND REPAYMENTS.....	32
3.7 OPTIONAL REDUCTIONS. ....	33
<b>Article IV INTERCONNECTION CREDIT FACILITY .....</b>	<b>33</b>
4.1 INTERCONNECTION CREDIT FACILITY.....	33
4.2 COMMITMENT AND FACILITY LIMIT.....	33
4.3 AVAILABLE ADVANCES.....	34
4.4 USE OF PROCEEDS.....	34
4.5 REPAYMENT.....	35
4.6 MANDATORY PREPAYMENTS AND REPAYMENTS.....	35
4.7 NO OPTIONAL REDUCTIONS. ....	36
<b>Article V LOAN ADVANCES .....</b>	<b>36</b>
5.1 THE ADVANCES. ....	36
5.2 PROCEDURE FOR BORROWING.....	37
5.3 INTEREST ON ADVANCES.....	37
5.4 INTEREST ON CANADIAN DOLLAR NON-REVOLVING CREDIT ADVANCES.....	38
5.5 INTEREST ON U.S. DOLLAR NON-REVOLVING CREDIT ADVANCES .....	42
5.6 CIRCUMSTANCES IMPACTING ON U.S. DOLLAR NON-REVOLVING CREDIT ADVANCES.....	46
5.7 INTEREST ON CANADIAN DOLLAR REVOLVING CREDIT ADVANCES.....	48
5.8 INTEREST ON U.S. DOLLAR REVOLVING CREDIT ADVANCES.....	48
5.9 CIRCUMSTANCES IMPACTING ON U.S. DOLLAR REVOLVING CREDIT ADVANCES.....	49

5.10	INTEREST ON INTERCONNECTION CREDIT ADVANCES.....	50
5.11	VARIABLE RATES OF INTEREST.....	54
5.12	PROHIBITION ON CONVERSIONS.....	54
5.13	EVIDENCE OF DEBT AND DETERMINATION OF INTEREST RATES.....	54
<b>Article VI CONDITIONS OF LENDING .....</b>		<b>57</b>
6.1	CONDITIONS PRECEDENT TO INITIAL ADVANCES.....	57
6.2	CONDITIONS OF ALL ADVANCES.....	59
<b>Article VII REPRESENTATIONS AND WARRANTIES .....</b>		<b>61</b>
7.1	REPRESENTATIONS AND WARRANTIES.....	61
7.2	SURVIVAL OF REPRESENTATIONS AND WARRANTIES.....	68
7.3	REPRESENTATIONS BY HYDRO.....	68
7.4	SURVIVAL OF REPRESENTATIONS AND WARRANTIES.....	70
<b>Article VIII COVENANTS OF THE LIMITED PARTNERSHIP.....</b>		<b>70</b>
8.1	AFFIRMATIVE COVENANTS.....	70
8.2	NEGATIVE COVENANTS.....	81
8.3	FINANCIAL COVENANTS.....	83
<b>Article IX SECURITY.....</b>		<b>84</b>
9.1	SECURITY.....	84
9.2	REGISTRATIONS.....	84
<b>Article X EVENTS OF DEFAULT .....</b>		<b>85</b>
10.1	EVENTS OF DEFAULT.....	85
10.2	EXPENSE OF HYDRO.....	89
10.3	REMEDIES CUMULATIVE.....	89
<b>Article XI DISPUTE RESOLUTION .....</b>		<b>90</b>
11.1	GENERAL.....	90
11.2	ENDEAVOUR TO RESOLVE.....	90
11.3	ARBITRATION.....	90
11.4	REPLY.....	90
11.5	REFERRAL TO ARBITRATION.....	91
11.6	APPOINTMENT OF ARBITRATOR.....	91
11.7	QUALIFICATIONS OF ARBITRATOR.....	91
11.8	LENGTH OF HEARING.....	92
11.9	PLACE OF HEARING.....	92
11.10	POWERS OF THE ARBITRATOR.....	92
11.11	COUNSEL.....	92
11.12	EVIDENCE.....	93
11.13	ARBITRATION AWARD.....	93
11.14	AWARD FINAL.....	93
11.15	COSTS OF ARBITRATION.....	93
11.16	PERFORMANCE OF OBLIGATIONS.....	93
11.17	CONFIDENTIALITY.....	93
11.18	ARBITRATOR’S UNDERTAKING.....	94
11.19	VACANCY.....	94
11.20	DAYS.....	94
<b>Article XII PAYMENTS, COMPUTATIONS AND INDEMNITIES .....</b>		<b>94</b>
12.1	TIMING OF PAYMENTS.....	94

12.2	PAYMENTS ON NON-BUSINESS DAYS.....	94
12.3	OVERDUE AMOUNTS.....	95
12.4	APPLICATION OF PAYMENTS, REPAYMENTS AND PREPAYMENTS.....	95
12.5	COMPUTATIONS OF INTEREST AND FEES.....	96
12.6	COSTS AND EXPENSES.....	97
12.7	INDEMNITY FOR CHANGE IN CIRCUMSTANCES.....	97
12.8	INDEMNITY FOR TRANSACTIONAL AND ENVIRONMENTAL LIABILITY.....	99
12.9	SURVIVAL OF INDEMNITIES; CONTRIBUTION.....	100
12.10	JUDGMENT CURRENCY.....	101
<b>Article XIII GENERAL PROVISIONS.....</b>		<b>101</b>
13.1	NOTICES.....	102
13.2	TIME OF THE ESSENCE.....	102
13.3	THIRD PARTY BENEFICIARIES.....	102
13.4	ENUREMENT.....	103
13.5	COUNTERPARTS.....	103
13.6	KNOWLEDGE.....	103
13.7	NON-MERGER.....	103
13.8	ASSIGNMENT.....	103
13.9	WAIVERS AND AMENDMENTS.....	104
Schedule A - Borrowing Notice		
Schedule B - Compliance Certificate		
Schedule C - Addresses for Notice		
Schedule D - List of Security Documents		
Schedule E - Repayment Notice		
Schedule F - Material Agreements		
Schedule G - Leasehold Real Estate		
Schedule H - Real Estate		
Schedule I - Unit Holders		
Schedule J - Liabilities		
Schedule K - Arbitrator's Undertaking		
Schedule L - Authorizations		

# PROJECT FINANCING AGREEMENT

DATED the 28th day of June, 2006.

B E T W E E N:

**WUSKWATIM POWER LIMITED PARTNERSHIP,**  
(hereinafter referred to as the "Limited Partnership")

- and -

**THE MANITOBA HYDRO-ELECTRIC BOARD,**  
(hereinafter referred to as "Hydro")

The parties agree as follows:

## ARTICLE I INTERPRETATION

### 1.1 Defined Terms.

In this Agreement, defined terms used herein shall have the following meanings:

"**Account**" means, with respect to any Person, all accounts receivable, monies and book debts at any time owed to such Person, and all instruments, chattel paper and other documents evidencing or securing any such accounts receivable, monies or book debts.

"**Additional Borrowing Authorizations**" shall have the meaning specified in Section 6.1(3).

"**Adjusted Construction Period**" means the period commencing on the Initial Closing Date and ending on the first Anniversary Date.

"**Advances**" means advances made by Hydro under this Agreement and "**Advance**" means any one of such Advances. Advances may, if permitted pursuant to the Credit Facility, be denominated in Canadian Dollars and designated a "**Canadian Dollar Non-Revolving Credit Advance**", a "**Canadian Dollar Revolving Credit Advance**" or an "**Interconnection Credit Advance**" or if permitted pursuant to the Credit Facility, denominated

in U.S. Dollars and designated a “**U.S. Dollar Non-Revolving Credit Advance**” or a “**U.S. Dollar Revolving Credit Advance**”. Each of a Canadian Dollar Non-Revolving Credit Advance, a Canadian Dollar Revolving Credit Advance, an Interconnection Credit Advance, a U.S. Dollar Non-Revolving Credit Advance and a U.S. Dollar Revolving Credit Advance is a “**Type**” of Advance.

“**Affiliate**” means with respect to any Person, any other Person directly or indirectly Controlling, Controlled by or under direct or indirect common Control with, such Person.

“**Aggregate Capital Contributions**” means for any particular day, the sum of: (i) the subscription price paid for the purchase of the Units by the Limited Partners; and (ii) any other capital amounts contributed by the Limited Partners to the Limited Partnership pursuant to the provisions of the Limited Partnership Agreement.

“**Agreement**” means this loan agreement and all schedules and instruments in amendment or confirmation of it; “**hereof**”, “**hereto**” and “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article, Section or other subdivision; “**Article**”, “**Section**” or other subdivision of this Agreement followed by a number refers to the specified Article, Section or other subdivision of this Agreement.

“**Anniversary Date**” means each anniversary of the Final Closing Date.

“**Applicant**” has the meaning specified in Section 11.3.

“**Arbitrator**” means an arbitrator appointed in accordance with the procedures set out in Article XI of this Agreement.

“**Auditors**” means such firm of chartered accountants as may be selected for the Limited Partnership pursuant to the Limited Partnership Agreement and as approved by Hydro from time to time in accordance with the provisions of Section 8.2(10).

“**Authorization**” means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any

Governmental Entity having jurisdiction over such Person, whether or not having the force of Law.

**“Banker’s Acceptance Rate”** means the closing rate on any particular day for a one month Canadian Dollar banker’s acceptance as traced in Bloomberg using the CDOR01 index. Where any Banker’s Acceptance Rate or average of a number of Banker’s Acceptance Rates is used in the calculation of any interest rate or amount due by the Limited Partnership hereunder (including in the determination of the Canadian Dollar Floating Rate), Hydro shall provide the Limited Partnership with a print-out of the CDOR01 index screen used to derive such rate or rates.

**“Borrowing”** means a borrowing consisting of one or more Advances.

**“Borrowing Notice”** has the meaning specified in Section 5.2.

**“Business”** means the business carried on by the General Partner for and on behalf of the Limited Partnership consisting of owning and directly or indirectly, planning, designing, constructing, operating and maintaining the Wuskwatim Project and any activities incidental or related thereto.

**“Business Day”** means any day on which Hydro’s head office is open for business at Winnipeg, Manitoba but in any event shall not include a Saturday, Sunday or statutory or civic holiday in Manitoba.

**“Canadian Dollar Floating Rate”** means, for any particular day(s) within a given month, the variable rate of interest (expressed as a percentage rate per annum) equal to the Short-Term Canadian Borrowing Cost incurred by Hydro for the month in which such day(s) fall. Provided that if there has been no Short-Term Canadian Borrowing Cost for that month, the variable interest rate (expressed as a percentage rate per annum) shall be based on the average of the daily Banker’s Acceptance Rates for that month plus the average of the daily Canadian Dollar Guarantee Rates for that month.

**“Canadian Dollar Guarantee Rate”** means for any particular day, the closing rate of interest (expressed as a percentage rate per annum) charged on such day by Manitoba to Hydro, as a fee for Manitoba’s guarantee of Hydro’s Canadian Dollar borrowings.

**“Canadian Dollar Non-Revolving Credit Advance”** means an Advance under the Non-Revolving Credit Facility denominated in Canadian Dollars.

**“Canadian Dollar Revolving Credit Advance”** means an Advance under the Revolving Credit Facility denominated in Canadian Dollars.

**“Canadian Dollars”** and **“\$”** each mean lawful money of Canada.

**“Canadian Thirty Year Rate”** means for any particular day, the rate of interest per annum equal to:

- (i) the Thirty Year Canada Bond Rate, as at 10:00 a.m. (Winnipeg time), for such day; plus
- (ii) the Canadian Dollar Guarantee Rate, as at 10:00 a.m. (Winnipeg time), for such day; and either:
  - (A) plus the Canadian Thirty Year Spread as at 10:00 a.m. (Winnipeg time), for such day, if the Thirty Year Canada Bond Rate used in the calculation of the said Canadian Thirty Year Spread is less than the rate of interest for the Thirty Year Manitoba Canadian Dollar Bond used in the calculation of the said Canadian Thirty Year Spread; or
  - (B) less the Canadian Thirty Year Spread as at 10:00 a.m. (Winnipeg time), for such day, if the Thirty Year Canada Bond Rate used in the calculation of the said Canadian Thirty Year Spread is greater than the rate of interest for the Thirty Year Manitoba Canadian Dollar Bond used in the calculation of the said Canadian Thirty Year Spread.

**“Canadian Thirty Year Spread”** means at any particular date, the difference between the Thirty Year Canada Bond Rate in effect on that date and the rate of interest (expressed as a percentage rate per annum) for Thirty Year Manitoba Canadian Dollar Bonds had Thirty Year Manitoba Canadian Dollar Bonds been issued by Manitoba on that day, at 10:00 a.m. (Winnipeg time), including commission costs (with the rate of interest determined by Hydro obtaining three quotes for Thirty Year Manitoba Canadian Dollar Bonds and using the median of the three rate quotes obtained).



“**Capital Stock**” means, with respect to any Person, any and all shares, interests, participation or equivalent interest in (however designated) the equity (including, without limitation, common shares, preferred shares, trust units and partnership interests) of such Person and any rights, warrants or options to subscribe for or acquire an equity interest in such Person.

“**Capitalized Lease Liabilities**” of any Person means all monetary obligations relating to any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases, and for purposes of each Loan Document the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such capitalized lease prior to the first date upon which such capitalized lease may be terminated by the lessee without payment of a premium or a penalty.

“**Claim**” means any claim of any nature whatsoever, including any demand, dispute, liability, obligation, debt, action, cause of action, suit, proceeding, litigation, arbitration, judgment, order, award, assessment and reassessment.

“**Closing**”, “**Closing Date**” or “**Date of Closing**” means the date agreed to by the parties for consummating the transactions contemplated herein provided that the conditions set forth in Article VI have been fulfilled or performed to the satisfaction of Hydro prior to such date.

“**Collateral**” means the Property of the Limited Partnership in respect of which Hydro has or will have or is intended to have a Lien pursuant to the Security Documents.

“**Compliance Certificate**” means a certificate in the form of Schedule B.

“**Construction Agreement**” means the agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as contractor, whereby Hydro, either directly or indirectly through subcontractors, will plan, design, engineer, construct and commission the Wuskwatim Project.

“**Construction Period**” has the meaning ascribed thereto in the PDA.

“**Contingent Liability**” means an agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable for (by

direct or indirect agreement, to provide funds for payment, to supply funds to, or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) the Debt of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligations under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the maximum potential amount of the Debt, obligation or other liability guaranteed thereby.

“**Credit Facilities**” means the Non-Revolving Credit Facility, the Revolving Credit Facility and the Interconnection Credit Facility, and a “**Credit Facility**” means any one of the Non-Revolving Credit Facility or the Revolving Credit Facility or the Interconnection Credit Facility, as the context requires.

“**Credit Facility Commitment**” means one of the Non-Revolving Credit Facility Commitment or the Revolving Credit Facility Commitment or the Interconnection Credit Facility Commitment, as the context requires and “**Credit Facility Commitments**” means all of them.

“**Cumulative Distributions**” means any form of distribution of Cumulative Net Income or return of Aggregate Capital Contributions by the Limited Partnership to the Limited Partners.

“**Cumulative Net Income**” means, for any particular day, the aggregate total of all income (loss) of the Limited Partnership since the Initial Closing Date, determined in accordance with GAAP.

“**Cure Period**” has the meaning specified in Section 10.1(d).

“**Currency Exchange Protection Agreement**” means any forward exchange agreement, currency swap, currency option or other similar financial agreement or arrangement designed to protect the Limited Partnership against, or manage exposure to fluctuations in, foreign currency exchange rates.

“**Currency Hedging Transaction**” means a transaction pursuant to a Currency Exchange Protection Agreement.

“**Debt**” of any Person means, without duplication:

- (a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (b) all obligations of such Person, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person;
- (c) Capitalized Lease Liabilities;
- (d) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Debt is to be determined (excluding trade payables incurred in the ordinary course of business);
- (e) net liabilities of such Person under all Hedging Transactions;
- (f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services excluding therefrom trade accounts payable in the ordinary course of business which are not overdue for a period of more than ninety (90) days or, if overdue for more than ninety (90) days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person; and indebtedness secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on Property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; and
- (g) all Contingent Liabilities of such Person in respect of any of the foregoing.

**"Debt Ratio"** means for any particular day, the quotient of the Limited Partnership's Net Debt on such day divided by the sum of: (i) the Limited Partnership's Net Debt on such day; and (ii) the Limited Partnership's Equity on such day, expressed as a percentage.

**"Deposit for Debt Retirement Interest Rate"** means for that period of time:

- (a) prior to the twenty-fifth Anniversary Date, the rate of interest per annum fixed at the Final Closing Date which is equal to the principal weighted average of all of the Canadian Thirty Year Rates (excluding, for each of the Canadian Thirty Year Rates, the Canadian Dollar Guarantee Rate component) established for the Canadian Dollar Non-Revolver Credit Advances, on or before the Final Closing Date, pursuant to Sections 5.4(b) and 5.4(c); and
- (b) from and after the twenty-fifth Anniversary Date, the rate of interest per annum fixed at the twenty-fifth Anniversary Date which is equal to the Canadian Thirty Year Rate (excluding the Canadian Dollar Guarantee Rate component) determined as at the twenty-fifth Anniversary Date.

“**Dispute**” has the meaning specified in Section 11.3.

“**Dispute Notice**” has the meaning specified in Section 11.3.

“**Distributions**” means any form of distribution of cash of the Limited Partnership to the Limited Partners and the return of any part of the Aggregate Capital Contributions by the Limited Partnership to the Limited Partners.

“**Equivalent Canadian Dollar Amount**” means on any day with respect to any amount of U.S. Dollars, the equivalent amount of Canadian Dollars determined by using the Bank of Canada noon spot rate quoted by the CDCFUSD index in Bloomberg to provide Canadian Dollars in exchange for U.S. Dollars at approximately 12:00 noon (Toronto time) on such day.

“**Event of Default**” has the meaning specified in Section 10.1.

“**Final Closing**” and “**Final Closing Date**” shall have the respective meanings ascribed thereto in the PDA.

“**Financial Quarter**” means, in relation to the Limited Partnership, each successive period of three consecutive months, the first such period beginning on the first day of the first month of the Limited Partnership’s Financial Year.

“**Financial Year**” means the financial year of the Limited Partnership, which currently commences on April 1 of each calendar year and ends on March 31 of the next calendar year.

“**Future Material Agreement**” has the meaning specified in Section 8.1(15).

“**GAAP**” means, at any time, generally accepted accounting principles in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants, or any successor Person at such time.

“**General Partner**” means 5022649 Manitoba Ltd., in its capacity as general partner of the Limited Partnership pursuant to the terms of the Limited Partnership Agreement.

“**Governmental Entity**” means any: (i) federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any agent, commission, board, or authority of any of the foregoing; or (iii) any body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing; except not including Hydro for the purposes of this Agreement.

“**Governmental Licences**” means all governmental licences, authorizations, consents, registrations, exemptions, permits and other approvals that are necessary or desirable for the operation of the Business by the General Partner for and on behalf of the Limited Partnership.

“**Hedging Transactions**” means Interest Rate Hedging Transactions and Currency Hedging Transactions.

“**Hydro**” means The Manitoba Hydro-Electric Board, a Crown corporation continued by the *Hydro Act*.

“**Hydro Act**” means *The Manitoba Hydro Act*, R.S.M. 1987, c. H190, as amended from time to time.

“**Initial Closing**” and “**Initial Closing Date**” shall have the respective meanings ascribed thereto in the PDA.

**“Initial Limited Partnership Agreement”** means the limited partnership agreement entered into between the General Partner, in its capacity as general partner, and Hydro, in its capacity as limited partner, dated the 9<sup>th</sup> day of December, 2004.

**“Initial Operating Period”** means the time period commencing on the Final Closing Date and terminating on the tenth Anniversary Date.

**“Integrated Power System”** means the system of hydraulic and thermal electric generation and power transmission facilities owned and operated or operated by Hydro which system is interconnected with other power utilities.

**“Intellectual Property”** means any and all issued patents and patent applications, industrial design registrations, trade marks, registrations and applications therefor, trade names and styles, logos, copyright registrations and applications therefor, all of the foregoing owned by or licenced to the Limited Partnership and used in or necessary to the operation of the Business.

**“Interconnection and Operating Agreement”** means the agreement entered into between Hydro (Transmission and Distribution Business Unit) and Hydro (Power Supply Business Unit) dated May 4, 2005 and subsequently assigned by Hydro (Power Supply Business Unit) to the Limited Partnership whereby the Wuskwatim Project will be interconnected to the Integrated Power System.

**“Interconnection Credit Advance”** means an Advance under the Interconnection Credit Facility denominated in Canadian Dollars.

**“Interconnection Credit Facility”** means the credit facility to be made available to the Limited Partnership by Hydro in the maximum amount of the Interconnection Credit Facility Commitment and in accordance with the terms hereof.

**“Interconnection Credit Facility Commitment”** means, on any day, an amount in Canadian Dollars equal to: (i) the sum of the actual costs that the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of the Interconnection and Operating Agreement for the construction and installation by Hydro, after the date of the assignment of the Interconnection and Operating Agreement to the Limited Partnership, of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades and all amounts the Limited Partnership is obligated to pay to Hydro pursuant to Section 3.2(8) of the System

Operations and Dispatch Agreement; less (ii) the sum of all payments made by the Limited Partnership to Hydro pursuant to the provisions of the Interconnection and Operating Agreement that were not advanced through the Interconnection Credit Facility and all payments made by Hydro on the Limited Partnership's behalf pursuant to Sections 3.1(a)(i) and (iii) of the System Operations and Dispatch Agreement.

**"Interconnection Credit Project Rate"** means the rate of interest per annum fixed on the Final Closing Date which is equal to the principal to maturity weighted average of all of the Canadian Thirty Year Rates established for the Interconnection Credit Facility, with the amount to be included for each of the applicable Canadian Thirty Year Rates, to be calculated using for each of those Canadian Thirty Year Rates: (i) the principal amount of the applicable Interconnection Credit Advances, determined on the date the interest rate attributable to those amounts has been converted to the Canadian Thirty Year Rate in effect on that date; (ii) the Canadian Thirty Year Rate applicable to that principal amount; and (iii) the applicable time period for that principal amount, being a thirty year time period, established as at the date the interest rate attributable to those principal amounts has been converted to the Canadian Thirty Year Rate; less the time period from that date to the Final Closing Date.

**"Interconnection System Upgrades"** shall have the meaning ascribed thereto in the Interconnection and Operating Agreement.

**"Interest Rate Conversion Date"** shall: (i) for the purposes of Section 5.4, have the meaning ascribed thereto in Section 5.4(b); (ii) for the purposes of Section 5.5, have the meaning ascribed thereto in Section 5.5(b); and (iii) for the purposes of Section 5.10, have the meaning ascribed thereto in Section 5.10(b).

**"Interest Rate Hedging Transaction"** means a transaction pursuant to an Interest Rate Protection Agreement.

**"Interest Rate Protection Agreement"** means any interest rate swap agreement, interest rate cap, collar or floor agreement or other similar financial agreement or arrangement designed to protect against or manage exposure to fluctuations in interest rates.

**"Investment"** means any direct or indirect loan, advance or other extension of credit (including by way of guarantee) or capital contribution to any Person (including by means

of transfers of cash or other property to any Person or payments for property or services for the account or use of others to any Person), purchase or acquisition of any Capital Stock, Debt or any other similar instruments issued by any Person, purchase or acquisition of Property or a business or undertaking, the incurrence of any Contingent Liability in respect of such Person, or expansion to or build out or renovation of personal or real property (excluding regular, day-to-day maintenance conducted in the ordinary course of business), by any means, of every nature or kind whatsoever.

“**Laws**” means all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which such word is used; and “**Law**” means any one of such Laws.

“**Leasehold Real Estate**” means the real estate of the Limited Partnership held under a lease, agreement to lease or other right of occupation.

“**LIBOR Rate**” means the daily setting for the one (1) month London - interbank offered rate as traced in Bloomberg using the US0001M. Subject to Section 5.13(2), the rate of interest is expressed as a percentage per annum on the basis of a 360 day year for deposits in U.S. Dollars in the London interbank market for a 30 day period.

“**Lien**” means, with respect to any Property, any charge, mortgage, pledge, hypothecation, security interest, lien, conditional sale (or other title retention agreement or lease in the nature thereof), lease, servitude, assignment, adverse claim, defect of title, restriction, trust, or other encumbrance of any kind in respect of such Property (including any Lien accounted for as Capitalized Lease Liabilities for purposes of a balance sheet prepared in accordance with GAAP), whether or not filed, recorded or otherwise perfected under applicable Laws.

“**Limited Partner**” means one of Hydro or TPC, as the context requires, in its capacity as a limited partner of the Limited Partnership, and “**Limited Partners**” means both of Hydro and TPC, in their respective capacities as limited partners of the Limited Partnership.



“**Limited Partnership**” means the Wuskwatim Power Limited Partnership created pursuant to the Initial Limited Partnership Agreement as amended and restated by the Limited Partnership Agreement for the purposes of the Business.

“**Limited Partnership Agreement**” means the limited partnership agreement amending and restating the Initial Limited Partnership Agreement, dated even date herewith between the General Partner in its capacity as general partner, and Hydro and TPC, in their respective capacities as limited partners.

“**Limited Partnership’s Canadian Dollar Account**” means the Canadian Dollar account maintained by the Limited Partnership at the Royal Bank of Canada.

“**Limited Partnership’s Capital Requirements**” means, at any time, an amount calculated in Canadian Dollars at such time equal to the sum of Wuskwatim Project Costs and Net Working Capital Requirements.

“**Limited Partnership’s Equity**” means for any particular day, (i) the sum of Aggregate Capital Contributions and Cumulative Net Income; less (ii) the sum of Cumulative Distributions and the amount of all reserves maintained by the Limited Partnership pursuant to Section 6.06 of the Limited Partnership Agreement.

“**Limited Partnership’s Net Debt**” means for any particular day, calculated in Canadian Dollars (and adjusted pursuant to any currency hedging undertaken by the Limited Partnership), the total Debt of the Limited Partnership (which includes the Total Outstandings under the Non-Revolving Credit Facility and Revolving Credit Facility, but does not include the Total Outstandings under the Interconnection Credit Facility nor any monetary obligations of the Limited Partnership pursuant to the provisions of the Power Purchase Agreement) on such day, less the sum of (i) the amount of Permitted Financial Investments of the Limited Partnership, on such day; and (ii) the balance of funds on deposit with Hydro, as determined in accordance with the provisions of Section 8.1(17), on such day.

“**Limited Partnership’s U.S. Dollar Account**” means the U.S. Dollar account maintained by the Limited Partnership at the Royal Bank of Canada.

“**Loan Documents**” means this Agreement, the Security Documents and all other agreements, certificates and instruments delivered or given pursuant to or in connection with this Agreement; and “**Loan Document**” means any one of such Loan Documents.

“**Loss**” means any loss whatsoever, whether direct or indirect, including expenses, actual costs, damages, judgments, penalties, fines, charges, claims, demands, liabilities, debts, interest, any and all legal fees and disbursements, on a solicitor and his own client basis.

“**Manitoba**” means the Government of Manitoba.

“**Material Adverse Business Effect**” means a material adverse effect (or a series of adverse effects, none of which is material in or of itself, but which cumulatively results in a material adverse effect) on: (i) the ability of the Limited Partnership to perform any of its material obligations under the Loan Documents; or (ii) the ability of Hydro to enforce any of the material obligations of the Limited Partnership under the Loan Documents, where Hydro acting reasonably has determined that its ability to enforce the said material obligations cannot be cured by Hydro within a reasonable period of time or without Hydro being materially adversely affected, notwithstanding that the Limited Partnership has provided Hydro with its written undertaking to assist Hydro in the manner set out in the said undertaking to cure the inability of Hydro to enforce the said material obligations of the Limited Partnership under the Loan Documents.

“**Material Agreements**” has the meaning specified in Section 7.1(9).

“**Material Governmental Licence**” means any governmental licence issued to the Limited Partnership that, if terminated, would materially impair the ability of the Limited Partnership to carry on the Business in the ordinary course and would have a Material Adverse Business Effect on the financial condition or business prospects of the Limited Partnership.

“**Maturity Date**” means the fiftieth Anniversary Date.

“**Net Working Capital Requirements**” means the aggregate amount required to finance the operating and capital requirements of the Business that Hydro has approved, from time to time, as a component of the Limited Partnership’s Capital Requirements, which amount is not already included as a component of the Wuskwatim Project Costs.

**“Non-Revolving Credit Facility”** means the credit facility to be made available to the Limited Partnership in the maximum amount of the Non-Revolving Credit Facility Commitment in accordance with the terms hereof.

**“Non-Revolving Credit Facility Commitment”** means (i) on any day during the Initial Operating Period an amount in Canadian Dollars equal to eighty-five (85%) percent of the Limited Partnership’s Capital Requirements on that day less the Total Outstandings on that day under the Revolving Credit Facility; and (ii) on any day at all times other than during the Initial Operating Period, an amount in Canadian Dollars equal to seventy-five (75%) percent of the Limited Partnership’s Capital Requirements on that day less the Total Outstandings on that day under the Revolving Credit Facility.

**“Notice”** means any notice, citation, directive, request for information, writ, summons and statement of claim or other communication from any Person.

**“Obligations”** has the meaning specified in Section 9.1.

**“Original Currency”** has the meaning specified in Section 12.10(1).

**“Other Currency”** has the meaning specified in Section 12.10(1).

**“PDA”** means the Project Development Agreement dated June 26 2006, made between Nisichawayasihk Cree Nation, Hydro, TPC, the General Partner and the Limited Partnership.

**“Permitted Financial Investments”** means:

- (a) negotiable instruments or securities in bearer or registered form which are not held for more than thirty (30) days, which have the Permitted Rating and which evidence (i) obligations of or guaranteed by the Government of Canada (ii) obligations of or guaranteed by a province or municipality of Canada (iii) deposits or bankers’ acceptances issued or accepted by any major Canadian chartered bank or (iv) commercial paper of Canadian corporations or Canadian issuers; or
- (b) other similar negotiable instruments or securities which are issued or guaranteed by Persons which have the Permitted Rating; or

- (c) demand deposits with a financial institution that has the Permitted Rating; or
- (d) such other investments approved in advance by Hydro, in its sole discretion, acting reasonably.

“**Permitted Liens**” means, with respect to any Person, any one or more of the following:

- (a) Liens for Taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Person in good faith by proper legal proceedings if, in Hydro’s opinion:
  - (i) adequate security has been provided to ensure the payment of such Taxes, assessments and charges; (ii) adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP; and (iii) in each case, such Liens will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
- (b) Liens resulting from any judgment rendered or Claim filed against such Person which such Person shall be contesting in good faith by proper legal proceedings if, in Hydro’s opinion, (i) adequate security has been provided to ensure the payment of such judgment or Claim; (ii) adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP; and (iii) in each case, such Liens will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
- (c) undetermined Liens arising in the ordinary course of business which have not at such time been filed pursuant to Law against such Person or which relate to obligations not due or delinquent;
- (d) Liens affecting real property of such Person which are: (i) title defects, encroachments or irregularities of a minor nature; or (ii) restrictions, easements, rights-of-way, servitudes or other similar rights in land (including, without restriction, rights of way and servitudes for railways, sewers, drains, gas and oil

pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other Persons and, in each case, such Liens will not materially interfere with the use of such real property by such Person;

- (e) the right reserved to or vested in any Governmental Entity by any statutory provision, or by the terms of any lease, licence, franchise, grant or permit of such Person, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (f) any Lien resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure worker's compensation, surety or appeal bonds, costs of litigation when required by Law, and statutory obligations;
- (g) any Lien resulting from security given to a public utility or Governmental Entity when required by such utility or Governmental Entity in connection with the operation of the business of such Person;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grants of real property from the Crown;
- (i) Liens arising in the ordinary course of business which are not registered against title to the Collateral and are not overdue for a period of more than thirty (30) days or which are being contested at the time by the Person in good faith by proper legal proceedings if, in Hydro's opinion, (i) adequate security has been provided to ensure payment of such Liens; (ii) adequate reserves with respect thereto are maintained on the consolidated books of such Person in accordance with GAAP; and (iii) in each case, such Liens will not materially interfere with use of such Property by the Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
- (j) any Lien, payment of which has been provided for by the depositing with Hydro of an amount in cash, or the obtaining of a surety bond satisfactory to Hydro, in its discretion, acting reasonably, sufficient in either case to pay or discharge such

Lien and which deposit or bond Hydro is authorized to use or draw upon for that purpose;

- (k) zoning and building by-laws and ordinances, municipal by-laws, provincial laws, and regulations, which do not adversely affect in any material respect the use of real property concerned in the operation of the business conducted on such real property;
- (l) covenants restricting or prohibiting access to or from lands abutting on controlled access highways which do not adversely impair in any material respect the use of the real property concerned in the operation of the business conducted on such real property;
- (m) Liens securing Purchase Money Debt; provided that: (i) such Liens shall extend only to the specific Property of the Limited Partnership acquired with the proceeds of such Purchase Money Debt (and not any other portion of the Collateral); and (ii) recourse in respect of such Liens shall be limited to such specific Property; and
- (n) Liens in favour of Hydro created by the Security Documents.

“**Permitted Rating**” means, with respect to any Permitted Financial Investment, a rating for short-term indebtedness of R-1 (low) or better from Dominion Bond Rating Service Limited or a rating for long-term indebtedness of A (High) or better from Dominion Bond Rating Service Limited or equivalent rating from Standard & Poor’s Rating Services, a division of McGraw-Hill Companies, Inc., or Moody’s Investors Service, Inc.

“**Person**” means an individual, partnership, corporation, trust, unincorporated association, syndicate, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

“**Power Purchase Agreement**” means an agreement dated even date herewith between the Limited Partnership and Hydro, whereby the Limited Partnership will sell to Hydro and Hydro will purchase from the Limited Partnership the capacity of and all of the energy generated by the Wuskwatim Generating Station, as amended or replaced from time to time.

“**Prime Rate**” means, for any particular day, the variable rate of interest per annum, calculated on the basis of a year of three hundred and sixty-five (365) days, equal to the rate of interest per annum established and reported by the Royal Bank of Canada (or such other major Canadian chartered bank designated by Hydro) to the Bank of Canada for such day as the variable rate of interest per annum for the determination of interest rates that the said bank charges to its customers of varying degrees of creditworthiness for Canadian Dollar loans made by it in Canada and which it refers to as its “Prime Rate”.

“**Proforma Compliance Certificate**” means the Compliance Certificate dated the Date of Closing delivered by the Limited Partnership to Hydro.

“**Property**” means, with respect to any Person, any land or property or asset of every kind, wherever situate, of such Person, whether now owned or hereafter acquired, whether real or immovable, personal, movable or mixed, tangible or corporeal, intangible or incorporeal, including Capital Stock in any other Person.

“**Purchase Money Debt**” means, with respect to any Person, all obligations of such Person incurred to finance the acquisition of Property (which shall not include any improvement or addition to any existing Property), forming part of the Collateral.

“**Real Estate**” means the real estate of the Limited Partnership owned in fee simple by the General Partner for and on behalf of the Limited Partnership, or an interest analogous to a fee simple interest held by the General Partner for and on behalf of the Limited Partnership as absolute owner.

“**Repayment Notice**” has the meaning specified in Section 3.7(1).

“**Reply**” has the meaning specified in Section 11.4.

“**Respondent**” has the meaning specified in Section 11.4.

“**Revolving Credit Facility**” means the credit facility to be made available to the Limited Partnership in the maximum amount of the Revolving Credit Facility Commitment in accordance with the terms hereof.

“**Revolving Credit Facility Commitment**” means \$50,000,000.

**“Sale-Leaseback Transaction”** means, with respect to any Person, any direct or indirect arrangement pursuant to which such Person transfers or causes the transfer of Property to another Person and leases it back from such Person pursuant to a capitalized lease classified and accounted for as a capital lease under GAAP.

**“Security Documents”** means those agreements and other documents in favour of Hydro described in Schedule D, in form and substance satisfactory to Hydro, acting reasonably, as such documents may be amended or restated from time to time, as security for all or any portion of the Obligations.

**“Short-Term Canadian Borrowing Cost”** means, for any month, Hydro’s actual weighted average borrowing costs, (which, it is acknowledged, includes the Canadian Dollar Guarantee Rate) expressed as a percentage rate per annum for all of Hydro’s Canadian Dollar borrowings outstanding during that month which have a term expiring, or are due to be paid, within three hundred and sixty-four (364) days in length of the date that each such borrowing was first incurred by Hydro. Hydro’s “actual weighted average borrowing cost” shall be calculated on the basis of the actual amount of interest that has accrued during that month divided by the “weighted principal amount” of all borrowing(s) which accrued interest during that month. The “weighted principal amount” for each borrowing is equal to the principal amount of each borrowing multiplied by the number of days the borrowing was outstanding during the month divided by 365.

**“Short-Term U.S. Borrowing Cost”** means, for any month, Hydro’s actual weighted average borrowing costs, (which, it is acknowledged, includes the U.S. Dollar Guarantee Rate) expressed as a percentage rate per annum for all of Hydro’s U.S. Dollar borrowings outstanding during that month which have a term expiring, or are due to be paid, within three hundred and sixty-four (364) days in length of the date that each such borrowing was first incurred by Hydro. Hydro’s “actual weighted average borrowing cost” shall be calculated on the basis of the actual amount of interest that has accrued during that month divided by the “weighted principal amount of all borrowing(s) which accrued interest during that month. The “weighted principal amount” for each borrowing is equal to the principal amount of each borrowing multiplied by the number of days the borrowing was outstanding during the month divided by 365.



**“System Operations and Dispatch Agreement”** means an agreement dated even date herewith, between the Limited Partnership and Hydro whereby Hydro will control and operate the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station, as amended or replaced from time to time.

**“TPC”** has the meaning ascribed thereto in the PDA.

**“Taxes”** means all taxes imposed by any Governmental Entity, including real property, personal property, goods and services, sales, transfer, purchase, stumpage, registration, capital, excise, import duties, payroll, unemployment, disability, employee’s income withholding, social security or withholding.

**“Thirty Year Canada Bond Rate”** means, at any particular date, that rate of interest (expressed as a percentage rate per annum) which a non-callable Government of Canada bond denominated in Canadian Dollars would carry if issued on such date at 10:00 a.m. (Winnipeg time) by the Government of Canada at 100% of its principal amount for a term of thirty years (with the rate of interest being determined by Hydro obtaining three quotations for the yield on that date of publicly traded Canadian Dollar non-callable Government of Canada reference bonds with a thirty year term, as adjusted by the financial institutions that have provided the three quotes to reflect the assumed issue date, and the thirty year term and using the median rate of the three rate quotes obtained).

**“Thirty Year Manitoba Canadian Dollar Bonds”** means a non-callable bond of the Province of Manitoba denominated in Canadian Dollars issued by Manitoba at 100% of the principal amount for a term of thirty years.

**“Thirty Year Manitoba U.S. Dollar Bonds”** means a non-callable bond of the Province of Manitoba denominated in U.S. Dollars issued by Manitoba at 100% of the principal amount for a term of thirty years.

**“Thirty Year U.S. Bond Rate”** means, at any particular date, the rate of interest (expressed as a percentage rate per annum) which a non-callable United States of America bond denominated in U.S. Dollars would carry if issued on such date at 10:00 a.m. (Winnipeg time) by the Government of the United States of America at 100% of its principal amount for a term of thirty years (with the rate of interest being determined by Hydro obtaining three quotations for

the yield on that date of publicly traded U.S. Dollar non-callable United States of America reference bonds with a thirty year term, as adjusted by the financial institutions that have provided the three quotes to reflect the assumed issue date and the thirty year term and using the median rate of the three rate quotes obtained).

**“Total Outstandings”** means, at any time:

- (a) with respect to the Non-Revolving Credit Facility, an amount calculated in Canadian Dollars, at such time, equal to the aggregate amount of all outstanding Advances under the Non-Revolving Credit Facility, including all accrued and unpaid interest, calculated by reference to the Equivalent Canadian Dollar Amount in the case of outstanding Advances in U.S. Dollars;
- (b) with respect to the Revolving Credit Facility, an amount calculated in Canadian Dollars, at such time, equal to the aggregate amount of all outstanding Advances under the Revolving Credit Facility, including all accrued and unpaid interest, calculated by reference to the Equivalent Canadian Dollar Amount in the case of outstanding Advances in U.S. Dollars;
- (c) with respect to the Non-Revolving Credit and Revolving Credit Facilities in the aggregate, the aggregate of the amounts in paragraph (a) and (b) above;
- (d) with respect to the Interconnection Credit Facility, an amount calculated in Canadian Dollars, at such time, equal to the aggregate amount of all outstanding Advances under the Interconnection Credit Facility, including all accrued and unpaid interest; and
- (e) with respect to the Credit Facilities in the aggregate, the aggregate of the amounts in paragraphs (c) and (d) above.

**“Transmission Owner Interconnection Facilities”** shall have the meaning ascribed thereto in the Interconnection and Operating Agreement.

**“Unit”** means one of the issued units in the Limited Partnership and **“Units”** means all of the issued units in the Limited Partnership.

**“U.S. Dollar Floating Rate”** means, for any particular day(s) within a given month, the variable rate of interest (expressed as a percentage rate per annum) equal to the Short-Term U.S. Borrowing Cost incurred by Hydro for the month in which such day(s) fall. Provided if there has been no Short-Term U.S. Borrowing Cost for that month, the variable interest rate (expressed as a percentage rate per annum) shall be based on the average of the daily LIBOR Rates for that month plus the average of the daily U.S. Dollar Guarantee Rates for that month.

**“U.S. Dollar Guarantee Rate”** means for any particular day, the closing rate of interest (expressed as a percentage rate per annum) charged on such day by Manitoba to Hydro, as a fee for Manitoba’s guarantee of Hydro’s U.S. Dollar borrowings.

**“U.S. Dollar Non-Revolver Credit Advance”** means an Advance under the Non-Revolver Credit Facility denominated in U.S. Dollars.

**“U.S. Dollar Revolver Credit Advance”** means an Advance under the Revolver Credit Facility denominated in U.S. Dollars.

**“U.S. Dollars”** and **“U.S. \$”** means lawful money of the United States of America.

**“U.S. Thirty Year Spread”** means at any particular date, the difference between the U.S. Thirty Year Bond Rate in effect on that date and the rate of interest (expressed as a percentage rate per annum) for Thirty Year Manitoba U.S. Dollar Bonds had Thirty Year Manitoba U.S. Dollar Bonds been issued by Manitoba on that day, at 10:00 a.m. (Winnipeg time), including commission costs (with the rate of interest determined by Hydro obtaining three quotes for Thirty Year Manitoba U.S. Dollar Bonds and using the median of the three quotes obtained).

**“U.S. Thirty Year Rate”** means for any particular day, the rate of interest per annum equal to:

- (i) the Thirty Year U.S. Bond Rate, as at 10:00 a.m. (Winnipeg time), for such day; plus
- (ii) the U.S. Dollar Guarantee Rate, as at 10:00 a.m. (Winnipeg time), for such day; and either:

- (A) plus the U.S. Thirty Year Spread, as at 10:00 a.m. (Winnipeg time), for such day, if the Thirty Year U.S. Bond Rate used in the calculation of the said U.S. Thirty Year Spread is less than the rate of interest for the Thirty Year Manitoba U.S. Dollar Bond used in the calculation of the said U.S. Thirty Year Spread; or
- (B) less the U.S. Thirty Year Spread, as at 10:00 a.m. (Winnipeg time), for such day, if the Thirty Year U.S. Bond Rate used in the calculation of the said U.S. Thirty Year Spread is greater than the rate of interest for the Thirty Year Manitoba U.S. Dollar Bond used in the calculation of the said U.S. Thirty Year Spread.

**“Wuskwatim Generating Station”** has the meaning ascribed thereto in the PDA.

**“Wuskwatim Project”** has the meaning ascribed thereto in the PDA.

**“Wuskwatim Project Costs”** means at any time, an amount calculated in Canadian Dollars, at such time, equal to the following amounts paid by the Limited Partnership or due and owing by the Limited Partnership as costs related to the Wuskwatim Project: (i) all amounts paid by the Limited Partnership or due and owing by the Limited Partnership pursuant to the Construction Agreement; (ii) the unamortized portion of all planning and engineering studies and licensing costs as at March 31, 2002; (iii) all planning and engineering studies and licensing costs from March 31, 2002 to the Initial Closing Date; (iv) such further costs incurred in respect of the Wuskwatim Project up to the Final Closing Date; and (v) such further costs incurred in respect of the Wuskwatim Project subsequent to the Final Closing Date; all as more particularly set out in the PDA and the related agreements pursuant thereto.

## **1.2 Interpretation.**

This Agreement shall be interpreted in accordance with the following:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) headings are inserted for convenience only and shall not affect the interpretation of this Agreement, any Loan Documents or any provisions hereof or thereof;

- (c) references to dollars, unless otherwise specifically indicated, shall be references to Canadian Dollars;
- (d) the word “including” shall mean “including without limitation” and “includes” shall mean “includes without limitation”;
- (e) the expressions “the aggregate”, “the total”, “the sum” and expressions of similar meaning shall mean “the aggregate (or total or sum) without duplication”;
- (f) in the computation of periods of time, unless otherwise expressly provided, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”;
- (g) accounting terms not specifically defined shall be construed in accordance with GAAP. Except as otherwise mandated by changes in GAAP from time to time, the financial statements required to be delivered pursuant to this Agreement shall be prepared, and all calculations made for the purposes of this Agreement shall be made, unless otherwise provided for herein, by the application of Hydro’s accounting policies and practices, in effect from time to time, in accordance with GAAP as evidenced by an unqualified audit opinion. In the event that the application of Hydro’s accounting policies and practices results in the inability to obtain an unqualified audit opinion, then the policies and practices in question will not be followed by the Limited Partnership; and
- (h) for the purposes of this Agreement, a Person (the “**first Person**”) shall be deemed to be “**Controlled**” by another Person or Persons if the Capital Stock of the first Person directly or indirectly held by or for the benefit of the other Person or Persons, acting in concert, other than by way of security only, is either: (i) more than 50% of the Capital Stock of the first Person outstanding at the time of such determination; or (ii) sufficient to permit the other Person or Persons to replace or elect the majority of the board of directors of the first Person, and “**Control**” and “**Controlling**” shall have corresponding meanings.

### 1.3 Interpretation of any other Loan Documents.

The provisions of Section 1.2 shall apply to the interpretation of all of the other Loan Documents unless specifically otherwise indicated.

**1.4 Severability.**

If any provision of this Agreement or any of the other Loan Documents is, or becomes, illegal, invalid or unenforceable, such provision shall be severed from this Agreement or such other Loan Document and be ineffective to the extent of such illegality, invalidity or unenforceability. The remaining provisions hereof or thereof shall be unaffected by such provision and shall continue to be valid and enforceable.

**1.5 Entire Agreement.**

This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties relating to the subject matter hereof and entered into prior to the date of this Agreement.

**1.6 Waiver.**

No failure on the part of Hydro to exercise, and no delay in exercising, any right under this Agreement or any other Loan Document shall operate as a waiver of such right; nor shall any single or partial exercise of any right under this Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right; nor shall any waiver of one provision be deemed to constitute a waiver of any other provision (whether or not similar). No notice to or demand on the Limited Partnership in any case shall entitle it to any notice or demand in similar or other circumstances unless such notice or demand is required under the terms of this Agreement or the applicable Loan Document. No waiver of any of the provisions of this Agreement or other Loan Document shall be effective unless it is in writing duly executed by the waiving party.

**1.7 Governing Law.**

This Agreement and, unless otherwise provided therein, each other Loan Document, shall be governed by, and interpreted in accordance with, the Laws of Manitoba and the Laws of Canada applicable therein.

**1.8 Incorporation of Schedules.**

The following schedules attached shall, for all purposes hereof, be incorporated in and form an integral part of this Agreement:

Schedule A	Borrowing Notice
Schedule B	Compliance Certificate
Schedule C	Addresses for Notice
Schedule D	List of Security Documents
Schedule E	Repayment Notice
Schedule F	Material Agreements
Schedule G	Leasehold Real Estate
Schedule H	Real Estate
Schedule I	Unit Holders
Schedule J	Liabilities
Schedule K	Arbitrator's Undertaking
Schedule L	Authorizations

It is acknowledged by Hydro that Schedules F to J (both inclusive) shall be delivered by the Limited Partnership to Hydro on or before the Initial Closing Date for attachment hereto, and upon such delivery and attachment, the said Schedules shall be deemed to form part of this Agreement.

**1.9 Conflicts.**

If a conflict or inconsistency exists between a provision of this Agreement and a provision of any of the other Loan Documents or any part thereof, then the provisions of this Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy of Hydro set out in any of the other Loan Documents or any part thereof which is not set out or provided for in this Agreement, such additional right or remedy shall not constitute a conflict or inconsistency.

**1.10 Acknowledgement.**

The parties hereto acknowledge that the Limited Partnership is a limited partnership formed under the Laws of Manitoba, a limited partner of which is only liable for any

of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership and the limited partner's pro rata share of any undistributed income. The parties hereto acknowledge that the obligations of the Limited Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners, their successors and assigns, and that resort shall only be had to the property of the Limited Partnership or the property of its general partner. The General Partner is the sole general partner of the Limited Partnership. Nothing in this Agreement shall be deemed to detract from or limit or restrict in any way the limited liability of any limited partner of the Limited Partnership.

## ARTICLE II NON-REVOLVING CREDIT FACILITY

### 2.1 Non-Revolving Credit Facility.

Hydro agrees, on the terms and conditions of this Agreement, to make available to the Limited Partnership the Non-Revolving Credit Facility by making such Advances to the Limited Partnership as may be requested by the Limited Partnership thereunder from time to time in accordance with this Agreement.

### 2.2 Commitment and Facility Limit.

- (1) Hydro shall not be obliged to make any Advance or Advances which would cause the Total Outstandings under the Non-Revolving Credit Facility to be greater than the Non-Revolving Credit Facility Commitment, provided that where the Limited Partnership is otherwise in good standing under this Agreement, Hydro shall advance, in accordance with the provisions of this Agreement, as an Advance to the Limited Partnership upon request, the lesser of the amount requested by the Limited Partnership and the amount hereunder which would, when advanced, cause the Total Outstandings to equal, but not exceed, the Non-Revolving Credit Facility Commitment.
- (2) The Non-Revolving Credit Facility may be utilized by the Limited Partnership commencing on the Closing, subject to the terms and conditions of this Agreement.



- (3) The Non-Revolving Credit Facility is a non-revolving credit facility and the principal amount of any Advance that is repaid to Hydro may not be re-borrowed and shall be a permanent reduction of the Non-Revolving Credit Facility Commitment.

**2.3 Available Advances.**

- (1) Hydro shall, on the terms and conditions of this Agreement, make the following Advances available under the Non-Revolving Credit Facility from time to time:

- (a) Canadian Dollar Non-Revolving Credit Advances on the occasion of any Borrowing; and
- (b) U.S. Dollar Non-Revolving Credit Advances on the occasion of any Borrowing;

as requested by the Limited Partnership in its Borrowing Notices.

- (2) All Advances requested herein shall be made available to the Limited Partnership in accordance with Article V.

**2.4 Use of Proceeds.**

The Limited Partnership shall use the proceeds of any Advances under the Non-Revolving Credit Facility in funding the Limited Partnership's Capital Requirements, in such manner as it deems necessary or desirable.

**2.5 Repayment.**

Subject to Hydro making an early demand for payment pursuant to Section 10.1 following an Event of Default, the Limited Partnership shall repay the Total Outstandings under the Non-Revolving Credit Facility and all other amounts owing to Hydro under the Non-Revolving Credit Facility on the Maturity Date and the Total Outstandings under the Non-Revolving Credit Facility and all other amounts owing to Hydro under the Non-Revolving Credit Facility shall become due and payable on the Maturity Date.

**2.6 Mandatory Prepayments and Repayments.**

- (1) If, on any day, Hydro notifies the Limited Partnership that the Total Outstandings under the Non-Revolving Credit Facility exceeds the Non-Revolving Credit Facility Commitment (other than where the excess is due to foreign exchange fluctuations, to which Section 2.6(2) shall apply), the Limited Partnership shall within five (5) Business Days of receiving such notice, repay to Hydro an amount sufficient to reduce the Total Outstandings to an amount equal to or less than the Non-Revolving Credit Facility Commitment. For greater certainty this will include any repayment required to be made on the tenth Anniversary Date so that the Total Outstandings under the Non-Revolving Credit Facility on that date do not exceed the applicable Non-Revolving Credit Facility Commitment for that Anniversary Date.
- (2) If and each time Total Outstandings under the Non-Revolving Credit Facility exceeds the amount that is equal to one hundred and five (105%) percent of the Non-Revolving Credit Facility Commitment as a result of foreign exchange fluctuations, the Limited Partnership shall within five (5) Business Days of being notified by Hydro of such excess repay to Hydro an amount sufficient to reduce the Total Outstandings under the Non-Revolving Credit Facility to an amount equal to or less than the Non-Revolving Credit Facility Commitment.

## **2.7 No Optional Reductions.**

The Limited Partnership shall not be entitled, unless obligated to do so pursuant to the provisions of this Agreement, to prepay in whole or in part the Total Outstandings under the Non-Revolving Credit Facility.

## **ARTICLE III REVOLVING CREDIT FACILITY**

### **3.1 Revolving Credit Facility.**

Hydro agrees, on the terms and conditions of this Agreement, to make available to the Limited Partnership the Revolving Credit Facility by making such Advances to the Limited Partnership as may be requested by the Limited Partnership hereunder from time to time in accordance with this Agreement.

**3.2 Commitment and Facility Limit.**

- (1) Hydro shall not be obliged to make any Advance or Advances which would cause the Total Outstandings under the Revolving Credit Facility to be greater than the Revolving Credit Facility Commitment, provided that where the Limited Partnership is otherwise in good standing under this Agreement, Hydro shall advance in accordance with the provisions of this Agreement, as an Advance to the Limited Partnership upon request, the lesser of the amount requested by the Limited Partnership and the amount hereunder which would, when advanced, cause the Total Outstandings to equal, but not exceed, the Revolving Credit Facility Commitment.
- (2) The Revolving Credit Facility may be utilized by the Limited Partnership commencing on the Closing, subject to the terms and conditions of this Agreement.
- (3) The Revolving Credit Facility is a revolving credit and the principal amount of any Advance that is repaid, may be reborrowed, subject to the terms and conditions of this Agreement.

**3.3 Available Advances.**

- (1) Hydro shall, on the terms and conditions of this Agreement, make the following Advances available under the Revolving Credit Facility from time to time:
  - (a) Canadian Dollar Revolving Credit Advances on the occasion of any Borrowing; and
  - (b) U.S. Dollar Revolving Credit Advances on the occasion of any Borrowing as requested by the Limited Partnership in its Borrowing Notices.
- (2) All Advances requested herein shall be made available to the Limited Partnership in accordance with Article V.

**3.4 Use of Proceeds.**

The Limited Partnership shall use the proceeds of any Advances under the Revolving Credit Facility to fund a portion of the Limited Partnership's Capital Requirements, including the funding of all the monthly payments required to be made by the Limited Partnership to Hydro pursuant to the provisions of the Interconnection and Operating Agreement for the actual costs incurred by Hydro for operating and maintaining the Transmission Owner Interconnection Facilities and Interconnection System Upgrades (in accordance with Section 5.10 of the Interconnection and Operating Agreement).

**3.5 Repayment.**

Subject to Hydro making an early demand for payment pursuant to Section 10.1 following an Event of Default, the Limited Partnership shall repay, the Total Outstandings under the Revolving Credit Facility and all other amounts owing to Hydro under the Revolving Credit Facility on the Maturity Date and the Total Outstandings under the Revolving Credit Facility and all other amounts owing to Hydro under the Revolving Credit Facility shall become due and payable on the Maturity Date.

**3.6 Mandatory Prepayments and Repayments.**

- (1) If, on any day Hydro notifies the Limited Partnership that the Total Outstandings under the Revolving Credit Facility exceeds the Revolving Credit Facility Commitment (other than where the excess is due to foreign exchange fluctuations, to which Section 3.6(2) shall apply), the Limited Partnership shall, within five (5) Business Days of receiving such notice, repay to Hydro an amount sufficient to reduce the Total Outstandings under the Revolving Credit Facility to an amount equal to or less than the Revolving Credit Facility Commitment.
- (2) If and each time Total Outstandings under the Revolving Credit Facility exceeds the amount that is equal to one hundred and five (105%) percent of the Revolving Credit Facility Commitment as a result of foreign exchange fluctuations, the Limited Partnership shall within five (5) Business Days of being notified by Hydro of such excess repay to Hydro an amount sufficient to reduce the Total Outstandings under the Revolving Credit Facility to an amount equal to or less than the Revolving Credit Facility Commitment.

**3.7 Optional Reductions.**

- (1) Subject to Section 3.7(2) and in addition to any mandatory payments under Sections 3.5 or 3.6, the Limited Partnership may prepay all or a portion of the Total Outstandings under the Revolving Credit Facility in whole or in part without penalty, bonus, or premium, upon at least two (2) Business Days notice to Hydro (the “**Repayment Notice**”). Each Repayment Notice shall be in substantially the form of Schedule E hereto and shall specify (A) the proposed date of such prepayment and (B) the aggregate principal amount of the prepayment. If such Repayment Notice is given, the Limited Partnership shall: (C) pay Hydro in accordance with such Repayment Notice the amount of the prepayment; and (D) pay to Hydro any interest on the amount of such prepayment or excess amount accrued to the date of such prepayment or reduction.
- (2) Each partial prepayment made by the Limited Partnership under the Revolving Credit Facility shall be in a minimum aggregate principal amount of \$250,000 and in an integral multiple of \$250,000.
- (3) No prepayment under the Revolving Credit Facility shall reduce the Revolving Credit Facility Commitment or the ability of the Limited Partnership to reborrow such amounts under the Revolving Credit Facility, up to the amount of the Revolving Credit Facility Commitment.

**ARTICLE IV**

**INTERCONNECTION CREDIT FACILITY**

**4.1 Interconnection Credit Facility.**

Hydro agrees, on the terms and conditions of this Agreement, to make available to the Limited Partnership the Interconnection Credit Facility by making such Advances to the Limited Partnership as may be requested by the Limited Partnership thereunder from time to time in accordance with this Agreement.

**4.2 Commitment and Facility Limit.**

- (1) Hydro shall not be obliged to make any Advance or Advances which would cause the Total Outstandings under the Interconnection Credit Facility to be greater than the Interconnection Credit Facility Commitment, provided that where the Limited Partnership is otherwise in good standing under this Agreement, Hydro shall advance in accordance with the provisions of this Agreement, as an Advance to the Limited Partnership upon request, the lesser of the amount requested by the Limited Partnership and the amount hereunder which would, when advanced, cause the Total Outstandings to equal, but not exceed, the Interconnection Credit Facility Commitment.
- (2) The Interconnection Credit Facility may be utilized by the Limited Partnership commencing on the Closing, subject to the terms and conditions of this Agreement.
- (3) The Interconnection Credit Facility is a non-revolving credit facility and the principal amount of any Advance that is repaid by the Limited Partnership to Hydro may not be re-borrowed and shall be a permanent reduction of the Interconnection Credit Facility Commitment.

#### **4.3 Available Advances.**

- (1) Hydro shall, on the terms and conditions of this Agreement, make available under the Interconnection Credit Facility, from time to time, Interconnection Credit Advances on the occasion of any Borrowing as requested by the Limited Partnership in its Borrowing Notices.
- (2) All Advances requested herein shall be made available to the Limited Partnership in accordance with Article V.

#### **4.4 Use of Proceeds.**

The Limited Partnership shall use the proceeds of any Advances under the Interconnection Credit Facility in funding the costs that the Limited Partnership is obligated to pay to Hydro for the construction and installation by Hydro of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades and in funding the amounts that

the Limited Partnership is obligated to pay to Hydro pursuant to Section 3.2(11) of the System Operations and Dispatch Agreement.

#### **4.5 Repayment.**

Subject to Hydro making an early demand for payment pursuant to Section 10.1 following an Event of Default, the Limited Partnership shall repay the Total Outstandings under the Interconnection Credit Facility and all other amounts owing to Hydro under the Interconnection Credit Facility on the Maturity Date and the Total Outstandings under the Interconnection Credit Facility and all other amounts owing to Hydro under the Interconnection Credit Facility shall become due and payable on the Maturity Date.

#### **4.6 Mandatory Prepayments and Repayments.**

- (1) If on any day Hydro notifies the Limited Partnership that the Total Outstandings under the Interconnection Credit Facility exceeds the Interconnection Credit Facility Commitment, the Limited Partnership shall, within five (5) Business Days of receiving such notice repay to Hydro an amount sufficient to reduce the Total Outstandings under the Interconnection Credit Facility to an amount equal to or less than the Interconnection Credit Facility Commitment.
- (2) The Limited Partnership shall, commencing on the Final Closing Date and ending on the twenty-fifth Anniversary Date, repay the Total Outstandings under the Interconnection Credit Facility by making semi-annual blended payments of interest and principal, with such semi-annual payments being an amount determined by Hydro, based on an amortization period of fifty (50) years, commencing as of the Final Closing Date, and at the Interconnection Credit Project Rate.
- (3) The Limited Partnership shall, on the date that is six months after the twenty-fifth Anniversary Date, commence repayment of the Total Outstandings outstanding as of the twenty-fifth Anniversary Date under the Interconnection Credit Facility by making semi-annual blended payments of interest and principal, with such semi-annual payments being an amount determined by Hydro based on an amortization period of twenty-five (25) years commencing as of the twenty-fifth Anniversary

Date, and at the interest rate determined in accordance with Section 5.10(e), such that at the Maturity Date the Total Outstandings under the Interconnection Credit Facility would be repaid in full.

**4.7 No Optional Reductions.**

The Limited Partnership shall not be entitled, unless obligated to do so pursuant to the provisions of this Agreement, to prepay in whole or in part the Total Outstandings under the Interconnection Credit Facility.

**ARTICLE V  
LOAN ADVANCES**

**5.1 The Advances.**

- (1) Hydro agrees, on the terms and conditions of this Agreement, to make such Advances to the Limited Partnership under the Credit Facilities as are requested from time to time by the Limited Partnership in the Borrowing Notices, on any Business Day.
- (2) Each Borrowing shall consist of one or more Types of Advances made to the Limited Partnership as requested from time to time by the Limited Partnership, on the same day. Each Type of Advance shall be in the aggregate minimum amount and in an integral multiple of the amount set forth below:
  - (a) a Canadian Dollar Non-Revolving Credit Advance shall be in an aggregate amount of not less than \$1,000,000 and in an integral multiple of \$500,000;
  - (b) a U.S. Dollar Non-Revolving Credit Advance shall be in an aggregate amount of not less than U.S. \$1,000,000 and in an integral multiple of U.S. \$500,000;
  - (c) a Canadian Dollar Revolving Credit Advance shall be in an aggregate amount of not less than \$250,000 and in an integral multiple of \$250,000;



- (d) a U.S. Dollar Revolving Credit Advance shall be in an aggregate amount of not less than U.S. \$250,000 and in an integral multiple of U.S. \$250,000; and
  - (e) Interconnection Credit Advances shall have no minimum restrictions on the quantum that may be borrowed.
- (2) Until repaid in full, each Advance shall be the Type of Advance specified in the applicable Borrowing Notice.

## **5.2 Procedure for Borrowing.**

Where the Limited Partnership requires an Advance under one or more of the Credit Facilities, notice (the “**Borrowing Notice**”) shall be given by the Limited Partnership to Hydro not later than 10:00 a.m. (Winnipeg time), at least two (2) Business Days (but not more than five (5) Business Days) prior to the date of the proposed Advance(s). Each Borrowing Notice shall be irrevocable and binding on the Limited Partnership and shall be in substantially the form of Schedule A and shall specify: (i) the requested advance date of the Advance(s); (ii) the Type of Advance or Types of Advances comprising such Borrowing; and (iii) the amount of each Advance by Type of Advance, and the aggregate amount of the Advances, comprising such Borrowing. Subject to the terms and conditions of this Agreement, Hydro will make such funds available to the Limited Partnership on the requested advance date of such Borrowing in immediately available funds by crediting or causing the crediting of the Limited Partnership’s Canadian Dollar Account or the Limited Partnership’s U.S. Dollar Account, as applicable. In the case of an Advance under the Interconnection Credit Facility to fund a required payment under the Interconnection and Operating Agreement, Hydro may, after receipt of a Borrowing Notice from the Limited Partnership requesting such Advance, make the required payment directly to Hydro (Transmission and Distribution Business Unit) on the Limited Partnership’s behalf, provided that Hydro shall make the required payment by the requested advance date specified in the Borrowing Notice and provided that it shall, forthwith after making such payment directly to Hydro (Transmission and Distribution Business Unit), give written notice to the Limited Partnership confirming that it has made the required payment together with particulars as to the amount and the date of the payment.

## **5.3 Interest on Advances.**

Each Advance or the amount thereof remaining outstanding from time to time, shall bear interest at the interest rate applicable to such Type of Advance determined in accordance with this Article V, from the date on which such Advance is received in the applicable Account(s) of the Limited Partnership or if applicable, is paid on the Limited Partnership's behalf to the date on which such Advance is repaid in full or otherwise in accordance with this Agreement.

**5.4 Interest on Canadian Dollar Non-Revolver Credit Advances.**

Subject to Section 12.3, Canadian Dollar Non-Revolver Credit Advances (or the portion thereof from time to time outstanding) shall bear interest calculated and payable in the following manner:

- (a) Each Canadian Dollar Non-Revolver Credit Advance received by the Limited Partnership prior to the first Anniversary Date shall from the date of such Advance until the earlier to occur of (i) the first Anniversary Date and (ii) the first Interest Rate Conversion Date to occur after such Advance, bear interest at a variable interest rate (expressed as a percentage rate per annum) equal to the Canadian Dollar Floating Rate in effect on the date of such Advance and thereafter in effect from time to time. Hydro shall provide the Limited Partnership with notice from time to time of the Canadian Dollar Floating Rate applicable to each such Advance and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the Canadian Dollar Floating Rate applicable to such Advance from time to time. Hydro shall notify the Limited Partnership of the interest payable by the Limited Partnership in respect of each such Advance based on the Canadian Dollar Floating Rate applicable from time to time to such Advance. Such interest will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly, within two (2) Business Days of the end of the month for which such interest is payable and the Limited Partnership shall by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

- (b) On the earlier to occur of (i) the first Anniversary Date and (ii) the day that the aggregate principal amount of outstanding Canadian Dollar Non-Revolving Credit Advances and U.S. Dollar Non-Revolving Credit Advances (calculated by reference to the Equivalent Canadian Dollar Amount) that are then subject to the Canadian Dollar Floating Rate or the U.S. Dollar Floating Rate, as applicable, equals or exceeds, in the aggregate, \$200,000,000 (the “**Interest Rate Conversion Date**”), the Canadian Dollar Non-Revolving Credit Advances then outstanding and forming part of the said \$200,000,000 in aggregate principal amount shall until the twenty-fifth Anniversary Date bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the Canadian Thirty Year Rate in effect on such date. Hydro shall, within two (2) Business Days of the interest rate conversion, provide the Limited Partnership with notice of the Canadian Thirty Year Rate applicable to the principal amount of the Canadian Dollar Non-Revolving Credit Advances that have been so converted and its supporting calculation therefor, which shall constitute, in absence of error, prima facie evidence of the applicable Canadian Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable by the Limited Partnership on the principal amount of the Canadian Dollar Non-Revolving Credit Advances that have been so converted based on the said Canadian Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the date of the interest rate conversion to the Canadian Thirty Year Rate, within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro. The provisions of paragraph (a) above shall, subject to paragraph (e) below, again apply to any Canadian Dollar Non-Revolving Credit Advances received by the Limited Partnership after an Interest Rate Conversion Date until the earlier to occur of (i) the first Anniversary Date and (ii) the next Interest Rate Conversion Date, when the provisions of this paragraph (b) shall again apply to the next tranche of \$200,000,000 in aggregate principal amount of Canadian Dollar Non-Revolving Credit Advances and U.S. Dollar Non-Revolving Credit Advances.

- (c) On the first Anniversary Date, the interest rate on the aggregate amount of all Canadian Dollar Non-Revolving Credit Advances advanced after the last Interest Rate Conversion Date to occur and then remaining outstanding and subject to the Canadian Dollar Floating Rate, shall until the twenty-fifth Anniversary Date bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the Canadian Thirty Year Rate in effect on the first Anniversary Date. Hydro shall, within two (2) Business Days of the interest rate conversion, provide the Limited Partnership with notice of the Canadian Thirty Year Rate applicable to the said Canadian Dollar Non-Revolving Credit Advances and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the applicable Canadian Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable on the said Canadian Dollar Non-Revolving Credit Advances based on the applicable Canadian Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the first Anniversary Date within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.
- (d) Each Canadian Dollar Non-Revolving Credit Advance made on or subsequent to the first Anniversary Date shall bear interest until the twenty-fifth Anniversary Date at a rate per annum equal at all times to the Canadian Thirty Year Rate in effect on the date the Advance is received by the Limited Partnership. Hydro shall provide the Limited Partnership with notice of the Canadian Thirty Year Rate applicable to each such Advance and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the applicable Canadian Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable on each such Advance by the Limited Partnership based on the applicable Canadian Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the date of the said Advance within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited

Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

- (e) On the twenty-fifth Anniversary Date, the Canadian Dollar Non-Revolver Credit Advances then outstanding shall thereafter bear interest at a fixed interest rate (expressed as a percentage rate per annum) determined by Hydro, acting reasonably, which interest rate is to be equal to the fixed interest rate (expressed as a percentage rate per annum) that the Royal Bank of Canada (or such other Schedule A Canadian chartered banks as determined by Hydro) would charge to the Limited Partnership under a non-revolving credit facility (including commission fees but excluding any commitment, syndication, investigation or standby fees or other similar bank or lender's fees) sufficient to fund the aggregate of the Canadian Dollar Non-Revolver Credit Advances then outstanding, with such additional availability as the Limited Partnership shall request and Hydro shall agree to provide, on the basis that all of the provisions of this Agreement would apply, *mutatis mutandis*, including the repayment provisions hereunder and a twenty-five (25) year term, the other Credit Facilities made available under this Agreement (and the aggregate amount of indebtedness of the Limited Partnership in respect of the Credit Facilities) and the lender's position as first secured creditor with a security interest in all of the Collateral. Such other factors as a commercial bank would take into consideration when providing this type of credit facility to a commercial customer with a similar risk profile would also be considered in determining the fixed interest rate to be charged, including loan syndication and other prudent lending practices for a commercial loan of like amount and term. Hydro shall give written notice to the Limited Partnership not later than the date that is three months prior to the twenty-fifth Anniversary Date of the fixed interest rate that it has determined it will charge the Limited Partnership hereunder. The parties hereto acknowledge that the fixed interest rate to be charged to the Limited Partnership shall be calculated and compounded semi-annually (not in advance) but shall not be less than the Canadian Thirty Year Rate calculated by Hydro as of the twenty-fifth Anniversary Date. Hydro shall be entitled to obtain a quotation from the Royal Bank of Canada (or such other Schedule A Canadian chartered banks as

determined by Hydro) to establish the fixed interest rate to be charged to the Limited Partnership and the Limited Partnership shall pay all reasonable costs and expenses incurred by Hydro in determining the fixed interest rate which shall apply. Hydro shall notify the Limited Partnership of the interest payable on the outstanding Canadian Dollar Non-Revolver Credit Advances based on the fixed interest rate determined pursuant to this section, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the twenty-fifth Anniversary Date (with the first semi-annual payment being triggered on the date that is six months after the twenty-fifth Anniversary Date) within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

#### **5.5 Interest on U.S. Dollar Non-Revolver Credit Advances**

Subject to Sections 5.6 and 12.3, U.S. Dollar Non-Revolver Credit Advances (or the portion thereof from time to time outstanding) shall bear interest calculated and payable in the following manner:

- (a) Each U.S. Dollar Non-Revolver Credit Advance received by the Limited Partnership prior to the first Anniversary Date shall from the date of such Advance until the earlier to occur of (i) the first Anniversary Date and (ii) the first Interest Rate Conversion Date to occur after such Advance, bear interest at a variable interest rate (expressed as a percentage rate per annum) equal to the U.S. Dollar Floating Rate in effect on the date of such Advance and thereafter in effect from time to time. Hydro shall provide the Limited Partnership with notice of the U.S. Dollar Floating Rate applicable from time to time to each such Advance, and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the U.S. Dollar Floating Rate applicable to such Advance from time to time. Hydro shall notify the Limited Partnership of the interest payable by the Limited Partnership in respect of each such Advance based on the U.S. Dollar Floating Rate applicable from time to time to such Advance. Such interest will be calculated on the basis of monthly compounding (not in advance)

and the actual number of days elapsed, and shall be payable monthly, within two (2) Business Days of the end of the month for which such interest is payable and the Limited Partnership shall by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

- (b) On the earlier to occur of (i) the first Anniversary Date and (ii) the day that the aggregate principal amount of outstanding Canadian Dollar Non-Revolver Credit Advances and U.S. Dollar Non-Revolver Credit Advances (calculated by reference to the Equivalent Canadian Dollar Amount) that are then subject to the Canadian Dollar Floating Rate or the U.S. Dollar Floating Rate, as applicable, equals or exceeds, in the aggregate \$200,000,000 (the “**Interest Rate Conversion Date**”), the U.S. Dollar Non-Revolver Credit Advances then outstanding and forming part of the said \$200,000,000 in aggregate principal amount shall until the twenty-fifth Anniversary Date bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the U.S. Thirty Year Rate in effect on such date. Hydro shall, within two (2) Business Days of the interest rate conversion, provide the Limited Partnership with notice of the U.S. Thirty Year Rate applicable to the principal amount of the U.S. Dollar Non-Revolver Credit Advances that have been so converted and its supporting calculations therefor, which shall constitute, in absence of error, prima facie evidence of the applicable U.S. Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable by the Limited Partnership on the principal amount of the U.S. Dollar Non-Revolver Credit Advances that have been so converted based on the said U.S. Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the date of the interest rate conversion to the U.S. Thirty Year Rate, within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro. The provisions of paragraph (a) above shall, subject to paragraph (e) below, again apply to any U.S. Dollar Non-Revolver Credit Advances received by the Limited Partnership after an Interest Rate Conversion Date until the earlier to occur of (i) the first Anniversary Date and (ii) the next Interest Rate Conversion

Date, when the provisions of this paragraph (b) shall again apply to the next tranche of \$200,000,000 in aggregate principal amount of Canadian Dollar Non-Revolver Credit Advances and U.S. Dollar Non-Revolver Credit Advances.

- (c) On the first Anniversary Date, the interest rate on the aggregate amount of all U.S. Dollar Non-Revolver Credit Advances advanced after the last Interest Rate Conversion Date to occur and then remaining outstanding and subject to the U.S. Dollar Floating Rate, shall until the twenty-fifth Anniversary Date bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the U.S. Thirty Year Rate in effect on the first Anniversary Date. Hydro shall, within two (2) Business Days of the interest rate conversion, provide the Limited Partnership with notice of the U.S. Thirty Year Rate applicable to the said U.S. Dollar Non-Revolver Credit Advances and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the applicable U.S. Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable on the said U.S. Dollar Non-Revolver Credit Advances based on the applicable U.S. Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the first Anniversary Date, within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.
- (d) Each U.S. Dollar Non-Revolver Credit Advance made on or subsequent to the first Anniversary Date shall bear interest until the twenty-fifth Anniversary Date at a rate per annum equal at all times to the U.S. Thirty Year Rate in effect on the date the Advance is received by the Limited Partnership. Hydro shall provide the Limited Partnership with notice of the U.S. Thirty Year Rate applicable to each such Advance, and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the applicable U.S. Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable on each such Advance by the Limited Partnership based on the applicable U.S. Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in



advance) and payable semi-annually from and after the date of the said Advance within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

- (e) On the twenty-fifth Anniversary Date, the U.S. Dollar Non-Revolving Credit Advances then outstanding shall thereafter bear interest at a fixed interest rate (expressed as a percentage rate per annum) determined by Hydro, acting reasonably, which interest rate is to be equal to the fixed interest rate (expressed as a percentage rate per annum) that the Royal Bank of Canada (or such other Schedule A Canadian chartered banks as determined by Hydro) would charge to the Limited Partnership under a non-revolving credit facility (including commission fees but excluding any commitment, syndication, investigation or standby fees or other similar bank or lender's fees) sufficient to fund the aggregate of the U.S. Dollar Non-Revolving Credit Advances then outstanding, with such additional availability as the Limited Partnership shall request and Hydro shall agree to provide, on the basis that all of the provisions of this Agreement would apply, *mutatis mutandis*, including the repayment provisions hereunder and a twenty-five (25) year term, the other Credit Facilities made available under this Agreement (and the aggregate amount of indebtedness of the Limited Partnership in respect of the Credit Facilities) and the lender's position as first secured creditor with a security interest in all of the Collateral. Such other factors as a commercial bank would take into consideration when providing this type of credit facility to a commercial customer with a similar risk profile would also be considered in determining the fixed interest rate to be charged, including loan syndication and other prudent lending practices for a commercial loan of like amount and term. Hydro shall give written notice to the Limited Partnership not later than the date that is three months prior to the twenty-fifth Anniversary Date of the fixed interest rate that it has determined it will charge the Limited Partnership hereunder. The parties hereto acknowledge that the fixed interest rate to be charged to the Limited Partnership shall be calculated and compounded semi-annually (not in advance) but shall not be less than the U.S. Thirty Year

Rate calculated by Hydro as of the twenty-fifth Anniversary Date. Hydro shall be entitled to obtain a quotation from the Royal Bank of Canada (or such other Schedule A Canadian chartered banks or tier 1 commercial lenders in the United States as determined by Hydro) to establish the fixed interest rate to be charged to the Limited Partnership and the Limited Partnership shall pay all reasonable costs and expenses incurred by Hydro in determining the fixed interest rate which shall apply. Hydro shall notify the Limited Partnership of the interest payable on the outstanding U.S. Dollar Non-Revolving Credit Advances based on the fixed interest rate determined pursuant to this section, which interest shall be calculated and compounded semi-annually (not in advance) and payable semi-annually from and after the twenty-fifth Anniversary Date (with the first semi-annual payment being triggered on the date that is six months after the twenty-fifth Anniversary Date) within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

#### **5.6 Circumstances Impacting on U.S. Dollar Non-Revolving Credit Advances.**

If Hydro, acting reasonably and in good faith, determines that: (i) by reason of circumstances affecting financial markets inside or outside Canada, U.S. Dollar financing is not available to Hydro or adequate and fair means no longer exist by which to ascertain the applicable interest rate on the basis provided in the definition of U.S. Dollar Floating Rate or U.S. Thirty Year Rate or the interest rate established pursuant to Section 5.5(e), as the case may be; or (ii) the making or continuation of any U.S. Dollar Non-Revolving Credit Advances has been made impracticable due to: (A) the occurrence of a contingency (other than a mere increase in rates payable by Hydro to fund such U.S. Dollar Non-Revolving Credit Advances or a mere change in currency exchange rates) which would cause a material adverse effect on Hydro to fund the Non-Revolving Credit Facility at the interest rate computed on the basis of the U.S. Dollar Floating Rate or U.S. Thirty Year Rate or the interest rate established pursuant to Section 5.5(e), as the case may be; or (B) a change since the date of this Agreement in any applicable Law or in the interpretation thereof by any Governmental Entity which affects Hydro or any relevant financial market, and which results in the U.S. Dollar Floating Rate or U.S. Thirty Year

Rate or the interest rate established pursuant to Section 5.5(e), as the case may be, no longer representing the approximate interest rate that Hydro would be able to obtain in such market for similar amounts borrowed in such market for the relevant time period; or (iii) any change since the date of this Agreement to any present Law, or the enactment of any future Law, or in the interpretation or application of any Law by any Governmental Entity, has made it unlawful for Hydro to make or maintain or to give effect to this obligation in respect of U.S. Dollar Non-Revolving Credit Advances as contemplated hereby, then Hydro shall give notice to the Limited Partnership that it is invoking the provisions of this Section 5.6 (together with reasonable particulars as to the reason for invoking it) and thereafter:

- (a) the right of the Limited Partnership to select, by Borrowing Notice issued after the date of the notice from Hydro contemplated hereunder, a U.S. Dollar Non-Revolving Credit Advance shall be suspended until Hydro determines that the circumstances causing such suspension no longer exist and Hydro so notifies the Limited Partnership, or Hydro has determined in its unfettered discretion an alternate method for continuing the U.S. Dollar Non-Revolving Credit Advances and such method is agreeable in all respects to the Limited Partnership;
- (b) if any U.S. Dollar Non-Revolving Credit Advance that has been requested by Borrowing Notice issued prior to the date of the notice from Hydro contemplated hereunder has not yet been advanced by Hydro, the applicable Borrowing Notice may, if deemed necessary or advisable by Hydro, be cancelled and the U.S. Dollar Non-Revolving Credit Advance requested in such Borrowing Notice shall not be made (subject to notice from Hydro to the Limited Partnership advising of such cancellation); and
- (c) if any U.S. Dollar Non-Revolving Credit Advances are already outstanding at any time when the right of the Limited Partnership to select U.S. Dollar Non-Revolving Credit Advances is suspended, all or some of such outstanding U.S. Dollar Non-Revolving Credit Advances may, if deemed necessary or advisable by Hydro, be converted by Hydro to Canadian Dollar Non-Revolving Credit Advances, in a principal amount equal to the Equivalent Canadian Dollar Amount of the U.S. Dollar Non-Revolving Credit Advances that Hydro has elected to

convert, determined on the date on which such Advances become denominated in Canadian Dollars.

**5.7 Interest on Canadian Dollar Revolving Credit Advances.**

Subject to Section 12.3, Canadian Dollar Revolving Credit Advances (or the portion thereof from time to time outstanding) shall bear interest calculated and payable at a variable rate per annum equal at all times to the Canadian Dollar Floating Rate in effect from time to time. Hydro shall provide the Limited Partnership with notice of the Canadian Dollar Floating Rate in effect for each month and its supporting calculations which constitute, in the absence of error, prima facie evidence of the Canadian Dollar Floating Rate for that month. Hydro shall notify the Limited Partnership of the interest payable on each such Advance by the Limited Partnership based on the applicable Canadian Dollar Floating Rate. Such interest will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly within two (2) Business Days of the end of the month for which such interest is payable and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

**5.8 Interest on U.S. Dollar Revolving Credit Advances.**

Subject to Sections 5.9 and 12.3, U.S. Dollar Revolving Credit Advances (or the portion thereof from time to time outstanding) shall bear interest calculated and payable at a variable rate per annum equal at all times to the U.S. Dollar Floating Rate in effect from time to time. Hydro shall provide the Limited Partnership with notice of the U.S. Dollar Floating Rate in effect for each month and its supporting calculations which constitute, in the absence of error, prima facie evidence of the U.S. Dollar Floating Rate for that month. Hydro shall notify the Limited Partnership of the interest payable on each such Advance by the Limited Partnership based on the applicable U.S. Dollar Floating Rate, which shall be compounded monthly (not in advance) calculated (but not compounded) daily and payable monthly within two (2) Business Days of the end of the month for which such interest is payable and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

**5.9 Circumstances Impacting on U.S. Dollar Revolving Credit Advances.**

If Hydro, acting reasonably and good faith, determines that: (i) by reason of circumstances affecting financial markets inside or outside Canada, U.S. Dollar financing is not available to Hydro; or adequate and fair means no longer exist by which to ascertain the applicable interest rate on the basis provided in the definition of the U.S. Dollar Floating Rate or Hydro has determined in its unfettered discretion an alternate method for the determination of such rates and such method is agreeable in all respects to the Limited Partnership; or (ii) the making or continuation of any U.S. Dollar Revolving Credit Advances has been made impracticable due to (A) the occurrence of a contingency (other than a mere increase in rates payable by Hydro to fund such U.S. Dollar Revolving Credit Advances or a mere change in currency exchange rates) which would cause a material adverse effect on Hydro to fund the Revolving Credit Facility at the interest rate computed on the basis of the U.S. Dollar Floating Rate; or (B) a change since the date of this Agreement in any applicable Law or in the interpretation thereof by any Governmental Entity which affects Hydro or any relevant financial market, and which results in the U.S. Dollar Floating Rate no longer representing the approximate interest rate that Hydro would be able to obtain in such market for similar amounts borrowed in such market for the relevant time period; or (iii) any change since the date of this Agreement to any present Law, or the enactment of any future Law, or in the interpretation or application of any Law by any Governmental Entity, has made it unlawful for Hydro to make or maintain or to give effect to this obligation in respect of U.S. Dollar Revolving Credit Advances as contemplated hereby, then Hydro shall give notice to the Limited Partnership that it is invoking the provisions of this Section 5.9 (together with reasonable particulars as to the reason for invoking it) and thereafter:

- (a) the right of the Limited Partnership to select, by Borrowing Notice issued after the date of the notice from Hydro contemplated hereunder, a U.S. Dollar Revolving Credit Advance shall be suspended until Hydro determines that the circumstances causing such suspension no longer exist and Hydro so notifies the Limited Partnership or Hydro has determined in its unfettered discretion an alternate method for continuing the U.S. Dollar Revolving Credit Advances and such method is agreeable in all respects to the Limited Partnership;
- (b) if any U.S. Dollar Revolving Credit Advance that has been requested by Borrowing Notice issued prior to the date of the notice from Hydro contemplated

hereunder has not yet been advanced by Hydro, the applicable Borrowing Notice may, if deemed necessary or advisable by Hydro, be cancelled and the U.S. Dollar Revolving Credit Advance requested in such Borrowing Notice shall not be made (subject to notice from Hydro to the Limited Partnership advising of such cancellation); and

- (c) if any U.S. Dollar Revolving Credit Advances are already outstanding at any time when the right of the Limited Partnership to select U.S. Dollar Revolving Credit Advances is suspended, all or some of such outstanding U.S. Dollar Revolving Credit Advances may, if deemed necessary by Hydro or advisable by Hydro be converted by Hydro to Canadian Dollar Revolving Credit Advances, in a principal amount equal to the Equivalent Canadian Dollar Amount of the U.S. Dollar Revolving Credit Advances that Hydro has elected to convert, determined on the date on which such Advances become denominated in Canadian Dollars.

#### **5.10 Interest on Interconnection Credit Advances.**

Subject to Section 12.3, Interconnection Credit Advances (or the portion thereof from time to time outstanding) shall bear interest calculated and payable, in the following manner:

- (a) Each Interconnection Credit Advance received by the Limited Partnership prior to the Final Closing Date shall from the date of such Advance until the earlier to occur of (i) the Final Closing Date and (ii) the first Interest Rate Conversion Date to occur after such Advance, bear interest at a variable interest rate (expressed as a percentage rate per annum) equal to the Canadian Dollar Floating Rate in effect on the date of such Advance and thereafter in effect from time to time. Hydro shall provide the Limited Partnership with notice of the Canadian Dollar Floating Rate applicable from time to time to each such Advance, and its supporting calculations therefor, which shall constitute, in the absence of error, prima facie evidence of the Canadian Dollar Floating Rate applicable to such Advance from time to time. Hydro shall notify the Limited Partnership of the interest payable by the Limited Partnership in respect of each such Advance based on the Canadian Dollar Floating Rate applicable from time to time to such Advance. Such interest

will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly, within two (2) Business Days of the end of the month for which such interest is payable and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro.

- (b) On the earlier to occur of (i) the Final Closing Date and (ii) the day that the aggregate principal amount of outstanding Interconnection Credit Advances that are then subject to the Canadian Dollar Floating Rate equals or exceeds, in aggregate, \$40,000,000 (the “**Interest Rate Conversion Date**”), the Interconnection Credit Advances then outstanding and forming part of the said \$40,000,000 in aggregate principal amount shall until the Final Closing Date bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the Canadian Thirty Year Rate in effect on such date. Hydro shall, within two (2) Business Days of the interest rate conversion, provide the Limited Partnership with notice of the said Canadian Thirty Year Rate applicable to the principal amount of the Interconnection Credit Advances that have been so converted and its supporting calculations therefore, which shall constitute, in absence of error, prima facie evidence of the applicable Canadian Thirty Year Rate. Hydro shall notify the Limited Partnership of the interest payable by the Limited Partnership on the principal amount of the Interconnection Credit Advances that have been so converted based on the said Canadian Thirty Year Rate, which interest shall be calculated and compounded semi-annually (not in advance) and shall be payable semi-annually from and after the date of the interest rate conversion to the Canadian Thirty Year Rate, within two (2) Business Days of the end of each six (6) month period for which such interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, pay such interest to Hydro. The provisions of paragraph (a) above shall, subject to paragraph (e) below, again apply to any Interconnection Credit Advances received by the Limited Partnership after an Interest Rate Conversion Date until the earlier to occur of (i) the Final Closing Date and (ii) the next Interest Rate Conversion Date, when the provisions of this paragraph (b)

shall again apply to the next tranche of \$40,000,000 in aggregate principal amount of Interconnection Credit Advances.

- (c) On the Final Closing Date, the interest rate on the aggregate amount of all Interconnection Credit Advances advanced after the last Interest Rate Conversion Date to occur and then remaining outstanding and subject to the Canadian Dollar Floating Rate, shall for the purpose of including same in the calculation of the Interconnection Credit Project Rate have a fixed interest rate attributed to those Interconnection Credit Advances (expressed as a percentage rate per annum) equal to the Canadian Thirty Year Rate in effect on the Final Closing Date.
- (d) On the Final Closing Date, the Interconnection Credit Advances then outstanding shall until the twenty-fifth Anniversary Date bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the Interconnection Credit Project Rate as determined on the Final Closing Date. Hydro shall, within two (2) Business Days of the interest rate conversion, provide the Limited Partnership with notice of the Interconnection Credit Project Rate and its supporting calculations therefore, which shall constitute, in the absence of error, prima facie evidence of the Interconnection Credit Project Rate. Hydro shall notify the Limited Partnership of the semi-annual blended principal and interest payment determined pursuant to Section 4.6(2) which is payable on the Total Outstandings due under the Interconnection Credit Facility based on the Interconnection Credit Project Rate and the blended principal and interest payment shall be payable semi-annually from and after the Final Closing Date within two (2) Business Days of the end of each six (6) month period for which such principal and interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, make such blended principal and interest payment to Hydro.
- (e) On the twenty-fifth Anniversary Date, the Interconnection Credit Advances then outstanding shall thereafter bear interest at a fixed interest rate (expressed as a percentage rate per annum) determined by Hydro, acting reasonably, which interest rate is to be equal to the fixed interest rate (expressed as a percentage rate per annum) that the Royal Bank of Canada (or such other Schedule A Canadian



chartered banks as determined by Hydro) would charge to the Limited Partnership under a non-revolving credit facility (including commission fees but excluding any commitment, syndication, investigation or standby fees or other similar bank or lender's fees) sufficient to fund the aggregate of Interconnection Credit Advances then outstanding on the basis that all of the provisions of this Agreement would apply, *mutatis mutandis*, including the repayment provisions hereunder and a twenty-five (25) year term, the other Credit Facilities made available under this Agreement (and the aggregate amount of indebtedness of the Limited Partnership in respect of the Credit Facilities) and the lender's position as first secured creditor with a security interest in all of the Collateral. Such other factors as a commercial bank would take into consideration when providing this type of credit facility to a commercial customer with a similar risk profile would also be considered in determining the fixed interest rate to be charged, including loan syndication and other prudent lending practices for a commercial loan of like amount and term. Hydro shall give written notice to the Limited Partnership not later than the date that is three months prior to the twenty-fifth Anniversary Date of the fixed interest rate that it has determined it will charge the Limited Partnership hereunder. The parties hereto acknowledge that the fixed interest rate to be charged to the Limited Partnership shall be calculated and compounded semi-annually (not in advance) but shall not be less than the Canadian Thirty Year Rate calculated by Hydro as of the twenty-fifth Anniversary Date. Hydro shall be entitled to obtain a quotation from the Royal Bank of Canada (or such other Schedule A Canadian chartered banks as determined by Hydro) to establish the fixed interest rate to be charged to the Limited Partnership and the Limited Partnership shall pay all reasonable costs and expenses incurred by Hydro in determining the fixed interest rate which shall apply. Hydro shall notify the Limited Partnership of the semi-annual blended principal and interest payment determined pursuant to Section 4.6(3) which is payable on the Total Outstandings under the Interconnection Credit Facility based on the fixed interest rate determined pursuant to this section and the blended principal and interest payment shall be payable semi-annually from and after the twenty-fifth Anniversary Date (with the first semi-annual payment being triggered on the date that is six months after the twenty-fifth Anniversary Date) within two (2) Business Days of the end

of each six (6) month period for which such principal and interest is payable, and the Limited Partnership shall, by 4:00 p.m. (Winnipeg time) on the next Business Day following receipt of such notice from Hydro, make such blended principal and interest payment to Hydro.

**5.11 Variable Rates of Interest.**

With every change in a rate component for determining any variable rate of interest payable under this Agreement, there shall be a corresponding change in the applicable variable rate of interest payable under this Agreement based on the change in such rate component, all without necessity of prior notice thereof to the Limited Partnership or to any Person.

**5.12 Prohibition on Conversions.**

Except with Hydro's prior written consent, the Limited Partnership shall not be entitled to convert an Advance, once a Borrowing Notice for the Advance has been issued by the Limited Partnership, from one Type to another.

**5.13 Evidence of Debt and Determination of Interest Rates.**

- (1) The indebtedness of the Limited Partnership in respect of all Advances hereunder shall be evidenced by the account records maintained by Hydro, which shall be prima facie evidence of such indebtedness for all purposes absent error. Hydro shall indemnify and save harmless the Limited Partnership for actual Losses suffered or actual reasonable costs incurred by the Limited Partnership due to Hydro's failure to correctly record or calculate any amount, rate, date or other data (including calculations to determine any amount) in the account records, where such failure was due to Hydro's gross negligence or willful misconduct. Notwithstanding this provision however the failure of Hydro to correctly record or calculate any amount, rate, date or other data (including calculations to determine any amount in the account records or in statements or notices issued to the Limited Partnership hereunder) shall not effect the obligation of the Limited Partnership to pay all amounts due hereunder to Hydro in accordance with this Agreement.

- (2) For purposes of the *Interest Act* (Canada): (i) whenever any interest or fee under this Agreement is calculated using a rate based on a period of time other than a calendar year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on such period of time multiplied by (y) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (z) the number of days in such period of time; (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.
- (3) Within ten (10) Business Days of the last day of each month during this Agreement, Hydro shall provide to the Limited Partnership, a written statement setting out the following information as at the last day of each month:
- (a) the Total Outstanding under the Non-Revolving Credit Facility, broken down by Canadian Dollar Non-Revolving Credit Advances and U.S. Dollar Non-Revolving Credit Advances, together with the following information in respect of each of the Canadian Dollar Non-Revolving Credit Advances and U.S. Dollar Non-Revolving Credit Advances:
    - (i) opening balances;
    - (ii) closing balances;
    - (iii) Advances provided during the month;
    - (iv) principal repaid during the month, if applicable;
    - (v) interest paid by the Limited Partnership, and applicable interest rate(s) charged to the Limited Partnership (together with the date(s) of any change(s) from floating rate(s) to fixed rate(s) charged on such Advances pursuant to the terms of this Agreement), during the month; and

- (vi) any costs charged by Hydro to the Limited Partnership during the month, and any reimbursements made by the Limited Partnership to Hydro during the month for costs charged by Hydro to the Limited Partnership.
- (b) the Total Outstanding under the Revolving Credit Facility as at Hydro's financial year end, broken down by Canadian Dollar Revolving Credit Advances and U.S. Dollar Revolving Credit Advances, together with the following information in respect of each of the Canadian Dollar Revolving Credit Advances and U.S. Dollar Revolving Credit Advances:
- (i) opening balances;
  - (ii) closing balances;
  - (iii) Advances provided during the month;
  - (iv) principal repaid during the month, if applicable;
  - (v) interest paid by the Limited Partnership, and applicable interest rate(s) charged to the Limited Partnership during the month; and
  - (vi) any costs charged by Hydro to the Limited Partnership during the month, and any reimbursements made by the Limited Partnership to Hydro during the month for costs charged by Hydro to the Limited Partnership.
- (c) the Total Outstandings under the Interconnection Credit Facility, together with the following information in respect of each of the Interconnection Credit Advances:
- (i) opening balances;
  - (ii) closing balances;
  - (iii) Advances provided during the month;
  - (iv) principal repaid during the month, if applicable;

- (v) interest paid by the Limited Partnership, and applicable interest rate(s) charged to the Limited Partnership (together with the date(s) of any change(s) from floating rate(s) to fixed rate(s) charged on such Advances pursuant to the terms of this Agreement), during the month; and
- (vi) any costs charged by Hydro to the Limited Partnership during the month, and any reimbursements made by the Limited Partnership to Hydro during the month for costs charged by Hydro to the Limited Partnership.

## ARTICLE VI CONDITIONS OF LENDING

### 6.1 Conditions Precedent to Initial Advances.

The obligation of Hydro to make Advances under the Credit Facilities on the Date of Closing is subject to the following conditions to be fulfilled or performed at or prior to the Initial Closing Date, which conditions are for the exclusive benefit of Hydro and may be waived in whole or in part by Hydro:

- (1) **Deliveries.** Hydro shall have received, at or prior to the time of the making of any Advances on the Closing the following, each dated such day as is satisfactory to Hydro and in form and substance satisfactory to Hydro and its counsel acting reasonably:
  - (a) certified copies of: (i) the Limited Partnership Agreement (and any amendments thereto or restatements thereof), (ii) the declaration of registration of the Limited Partnership as filed in the Companies Office (Manitoba); (iii) the resolutions of the board of directors of the General Partner approving the entering into of this Agreement by the General Partner for and on behalf of the Limited Partnership and each other Loan Document to which the Limited Partnership is a party and the completion of all transactions contemplated hereunder and thereunder; and (iv) constating documents and by-laws of the General Partner, resolutions of

the Board of directors of the General Partner approving the entering into of the other Loan Documents to which it is a party in its personal capacity and the completion of all transactions contemplated hereunder and thereunder;

- (b) a certificate of the Secretary of the General Partner certifying the names and true signatures of the persons authorized to sign, on behalf of the General Partner for and on behalf of the Limited Partnership, this Agreement and the other Loan Documents to which the Limited Partnership is a party and to sign the other Loan Documents to which the General Partner is a party in its personal capacity;
- (c) a certificate of status, with respect to the General Partner and the Limited Partnership;
- (d) the Security Documents creating a first charge security interest on all of the Property of the Limited Partnership and securing the Obligations, duly executed by the General Partner for and on behalf of the Limited Partnership and where applicable, duly executed by the General Partner in its personal capacity;
- (e) evidence of the registration of the Security Documents in all offices where such registration, filing or recording is necessary or desirable to protect any rights or remedies of Hydro thereunder and receipt of legal opinions of registration counsel in form and substance acceptable to Hydro provided however that Hydro shall use its commercially reasonable efforts to complete all such registrations and to obtain the required evidence and opinions from its legal counsel in advance of the Initial Closing Date;
- (f) the Proforma Compliance Certificate;
- (g) evidence of the insurance coverage required pursuant to Section 8.1(16) in form and content acceptable to Hydro;
- (h) duly completed Schedules F, G, H, I and J to this Agreement; and

- (i) such other certificates and documentation as Hydro may reasonably request to give effect to this Agreement.
- (2) **Material Adverse Business Effect.** No event, condition or circumstance has arisen which would have a Material Adverse Business Effect.
- (3) **Authorizations.** Hydro has received all Authorizations that it requires for the due performance of the Loan Documents (which Authorizations are as specified in Schedule L), with the sole exception that Hydro will require additional borrowing authority from Manitoba under applicable legislation for amounts to be borrowed by Hydro after August 31, 2006, to fund Advances requisitioned by the Limited Partnership by Borrowing Notices thereafter (the “**Additional Borrowing Authorizations**”). Hydro covenants and agrees to use its best efforts to obtain such Additional Borrowing Authorizations as may be required by it from time to time for the due and timely performance of its covenants under the Loan Documents.
- (4) **PDA.** All of the conditions set forth in Article XIII of the PDA shall have been fulfilled or performed and the Initial Closing shall have been completed.
- (5) **Other Conditions.** The conditions set forth in Section 6.2 shall have been fulfilled or performed.

## **6.2 Conditions of All Advances.**

At any time, the obligation of Hydro to make an Advance under the Credit Facilities is subject to the following conditions being satisfied on the date of such Advance, which conditions are for the exclusive benefit of Hydro and may be waived in whole or in part by Hydro, in its sole discretion:

- (1) **Credit Facility Commitment Limit.** The Total Outstandings under the Credit Facility in respect of which the Advance is requested in the Borrowing Notice shall not prior to or after giving effect to the Advance, exceed the Credit Facility Commitment for such Credit Facility.

- (2) **Truth of Representations and Warranties.** The representations and warranties of the Limited Partnership contained in the Loan Documents to which it is a party and of the General Partner in any Loan Documents to which it is a party in its personal capacity, shall be true and correct as of the date on which the Advance is made with the same force and effect as if such representations and warranties had been made on and as of such date; provided that, to the extent the disclosure in the representations and warranties is no longer true and correct, the Limited Partnership or the General Partner shall be entitled to update such disclosure to Hydro, provided that if such disclosure is materially adverse it must be approved by Hydro.
- (3) **Performance of Covenants.** The General Partner (as general partner for and on behalf of the Limited Partnership) and, where applicable, in its personal capacity, shall have fulfilled or complied with all covenants herein contained or contained in any other Loan Documents to be performed or caused to be performed by it at or prior to the date of the Advance.
- (4) **No Event of Default.** No Event of Default shall have occurred and be continuing.
- (5) **Payment of Costs and Expenses.** The Limited Partnership shall have paid all invoices rendered to the Limited Partnership by Hydro for costs and expenses, including legal expenses, incurred by Hydro in connection with the Loan Documents, which Hydro acknowledges can be paid, wholly or in part, through Advances under the Credit Facilities, and this condition therefore shall be deemed to be satisfied upon the issuance to Hydro of a Borrowing Notice requesting an Advance to effect payment of such costs and expenses.
- (6) **Authorizations.** Hydro has obtained such borrowing authority (including the Additional Borrowing Authorizations) as may be required by it from time to time for the due and timely performance of its covenants under the Loan Documents, including in order to enable it to make the Advances requisitioned from time to time by the Limited Partnership by Borrowing Notices.



- (7) **No Change in Laws.** No Law or any change in any Law shall have been introduced or enacted, the effect of which will be to prohibit Hydro from making any Advance.
- (8) **Borrowing Notice.** Hydro shall have received a Borrowing Notice in compliance with this Agreement.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and Warranties.**

To induce Hydro to make Advances available hereunder, the Limited Partnership represents and warrants to Hydro that each of the following representations and warranties is true and correct:

- (1) **Status and Power.** (i) The Limited Partnership is a limited partnership duly organized and validly subsisting as a limited partnership in good standing under the laws of Manitoba and has a full partnership power and capacity to own its property and to carry on its Business, through the General Partner. The Limited Partnership is duly registered to carry on business in the jurisdictions in which the nature of its Property or the Business carried on by it makes such qualification necessary; (ii) The General Partner is a corporation duly incorporated and organized, validly subsisting under the Laws of Manitoba and has full corporate power and capacity to own its property and carry on its business and to act as the general partner of the Limited Partnership. The General Partner is duly registered in all jurisdictions where its duties as general partner of the Limited Partnership make such registration necessary or desirable.
- (2) **Authorization.** (i) The General Partner has full power and capacity and full legal right to enter into and perform, as General Partner for and on behalf of the Limited Partnership, the obligations of the Limited Partnership under this Agreement and under all other Loan Documents to which the Limited Partnership is a party and has, or will have by Closing, taken all action necessary to be taken by it to authorize such acts; (ii) The General Partner has full power and capacity

and full legal right, in its personal capacity, to enter into and perform its obligations under all of the Loan Documents to which it is or will be a party in its personal capacity, and has or will have by Closing taken all action necessary to be taken by it to authorize such acts.

- (3) **Enforceability of Agreement.** (i) This Agreement and each other Loan Document to which the Limited Partnership, is a party constitutes legal, valid and binding obligations of the Limited Partnership, enforceable against the Limited Partnership in accordance with their respective terms, subject only to any limitation under applicable Laws relating to (a) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and (b) the discretion that a court may exercise in the granting of equitable remedies; and (ii) Any Loan Documents to which the General Partner in its personal capacity is a party constitutes legal, valid and binding obligations of the General Partner enforceable against the General Partner in accordance with their respective terms, subject only to any limitation or applicable laws relating to (a) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and (b) the discretion that a court may exercise in the granting of equitable remedies.
- (4) **Government Approval, Regulation, etc.** No authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or other Person (other than those that have been, or by the Closing will be, duly obtained or made) is required for the due execution, delivery or performance by the General Partner as general partner for and on behalf of the Limited Partnership and, where applicable, in its personal capacity, of any Loan Document to which the General Partner (as general partner for and on behalf of the Limited Partnership) and, where applicable, in its personal capacity, is a party.
- (5) **Compliance with Other Instruments.** The consummation of the transactions hereby contemplated and compliance with the terms, conditions and provisions of this Agreement and any of the other Loan Documents will not: (i) conflict with or result in a breach of, or constitute a default under any of the terms, conditions or provisions of the Limited Partnership Agreement or any Material Agreement to which the Limited Partnership is a party or by which it is bound; or (ii) result in

the creation or imposition of any Lien on any Property of the Limited Partnership except as permitted by this Agreement; (iii) conflict with or result in a breach of or constitute default under any of the terms, conditions or provisions of the certificate of incorporation or other constating documents or by-laws of the General Partner or any Material Agreement to which the General Partner is a party or by which it is bound in its personal capacity; or (iv) result in the creation or imposition of any Lien on the Property of the General Partner in its personal capacity, except as permitted by this Agreement.

(6) **Restrictive Documents.** (i) The Limited Partnership is not a party to or bound by any restriction in its Limited Partnership Agreement or in any Notice, Law, Claim, Material Agreement or Lien, or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement or any other Loan Documents to which the General Partner is a party for and on behalf of the Limited Partnership, or compliance by the Limited Partnership with the terms, conditions and provisions hereof or thereof or the continuing operation of the Business; (ii) The General Partner is not subject to or a party to, any restriction in its constating documents or by-laws, or in any Notice, Law, Claim, Material Agreement or Lien, or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement or any other Loan Documents to which the General Partner is a party in its personal capacity, or compliance by the General Partner with the terms, conditions and provisions hereof or thereof or the continuing operation of the Business.

(7) **Title to Property.** (i) The Limited Partnership is the sole beneficial owner of and has a good and marketable beneficial title to and will be lawfully possessed of the Collateral, free and clear of all Liens, except Permitted Liens, and the General Partner for and on behalf of the Limited Partnership has full right to mortgage, pledge, charge and assign to Hydro the Collateral mortgaged, pledged, charged or assigned to Hydro pursuant to the Security Documents as contemplated herein. No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement,

option, understanding or commitment, for the purchase from the Limited Partnership of any of the Collateral; (ii) In certain circumstances, the General Partner holds legal title to the Property, including the Collateral on behalf of the Limited Partnership, free and clear of all liens, except Permitted Liens. The General Partner for and on behalf of the Limited Partnership has full right to mortgage, pledge, charge and assign to Hydro the Collateral mortgaged, pledged, charged or assigned to Hydro pursuant to the Security Documents as contemplated herein. No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding or commitment, for the purchase from the General Partner of any of the Collateral.

- (8) **Compliance with Laws.** The Limited Partnership and the General Partner are in material compliance with all applicable Laws.
- (9) **No Breach of Contracts.** In addition to the leases of the Leasehold Real Estate listed in Schedule G which will be completed and provided by the Limited Partnership to Hydro on or before the Initial Closing Date and which shall be deemed to be “Material Agreements”, Schedule F, which will be completed and provided by the Limited Partnership to Hydro on or before the Initial Closing Date, will contain a complete and accurate list of all other agreements to which the General Partner as general partner for and on behalf of the Limited Partnership and, where applicable, in its personal capacity, is a party or by which it is bound having liabilities or obligations of any party thereto over the term thereof in excess of \$1,000,000 (collectively the “**Material Agreements**”). The Limited Partnership has provided, or will on or before the Initial Closing Date provide, copies of all of the Material Agreements, including amendments or additions thereto, to Hydro. On the date of execution of each of the Future Material Agreements (as defined below in Section 8.1(15)), Schedule F hereto shall be deemed to be amended to include such Future Material Agreements and such Future Material Agreements shall be deemed to be “Material Agreements” for the purposes of this Agreement from and after such execution date. Each Material Agreement is, or will on the Initial Closing Date be, in full force and

effect, unamended (except as disclosed to Hydro), and there exists no default or event, occurrence, condition or act (including the completion of the transactions contemplated in this Agreement and the Loan Documents) which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become a default thereunder. The General Partner (as general partner for and on behalf of the Limited Partnership) and, where applicable, in its personal capacity, has not violated or breached, in any respect, any of the terms or conditions of any Material Agreements and, to the best of the knowledge of the Limited Partnership, all of the material covenants to be performed by any other party thereto have been fully performed.

- (10) **Books and Records.** All books and records of the Limited Partnership and the General Partner have been fully, properly and accurately kept and completed in accordance with GAAP and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.
- (11) **Tax Liability.** Except for any Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books: (i) the General Partner has, for and on behalf of the Limited Partnership and in its personal capacity, in a timely manner filed all tax returns, elections, filings and reports with respect to Taxes required by Law to be filed by it and such returns, elections, filings and reports are true, complete and correct; (ii) the General Partner has, for and on behalf of the Limited Partnership and in its personal capacity, paid, or reserved in the financial statements of the Limited Partnership or the General Partner (as applicable), all Taxes which are due and payable, and has paid all assessments and reassessments and all other Taxes, governmental charges penalties, interest and fines due and payable by it for and on behalf of the Limited Partnership or in its personal capacity (as applicable); (iii) neither the Limited Partnership nor the General Partner has any liability, contingent or otherwise, for Taxes, except Taxes not now due and payable with respect to ordinary operations during the current fiscal period adequate provision for the payment of which has been made; and (iv) the General Partner has paid for and on behalf of the Limited Partnership and

in its personal capacity (as applicable) as and when due all applicable Taxes and remitted as required by Law all applicable Taxes and deductions and any interest or penalties related thereto.

- (12) **Unit Holders.** Except as disclosed in Schedule I, which will be completed and provided to Hydro on or before the Initial Closing Date, no Person has any written or oral agreement, option, understanding or commitment, or any right capable of becoming any agreement, option, understanding, commitment or right for the purchase of any Units or to receive payment based on the value of any such Units. The issued and outstanding Units and Debt (excluding Debt under this Agreement) of the Limited Partnership, and the registered and beneficial holders of such Units and Debt (excluding Debt under this Agreement) are as described in Schedule I.
- (13) **Liabilities.** The Limited Partnership does not have any liabilities, whether accrued, absolute, contingent or otherwise, of any kind or nature whatsoever, except as disclosed in Schedule J, which will be completed and provided to Hydro on or before the Initial Closing Date, and except pursuant to or as permitted by the Loan Documents, or incurred after the date hereof in compliance with the Loan Documents.
- (14) **No Event of Default.** No Event of Default has occurred, nor has any event or condition occurred which, with the giving of notice or passage of time, or both, would constitute an Event of Default under this Agreement or any of the other Loan Documents. No default has occurred which, with the giving of notice or passage of time, or both, would constitute a default under any one or more of the Material Agreements which could result in the acceleration of amounts owing by the General Partner for and on behalf of the Limited Partnership under any such Material Agreements.
- (15) **Financial Information.** The financial statements of the Limited Partnership furnished to Hydro pursuant to this Agreement have been prepared in accordance with GAAP consistently applied, and present fairly the consolidated financial condition of the Limited Partnership as at the dates thereof and the results of their

operations for the periods then ended. All balance sheets, all statements of operations, unit holders' equity and cash flow and all other financial information of the Limited Partnership furnished pursuant to Section 8.1(1) have been and will for periods following the Closing be prepared in accordance with GAAP consistently applied, and do or will present fairly the consolidated financial condition of the Limited Partnership as at the dates thereof and the results of their operations for the periods then ended. For greater certainty, Hydro acknowledges that where the application of Hydro's accounting policies and practises to the Limited Partnership is not in compliance with GAAP, the Limited Partnership shall not be liable to Hydro for any breach of this representation caused by the application of Hydro's accounting policies and practices to the Limited Partnership.

- (16) **Intellectual Property.** All Intellectual Property used by the Limited Partnership is used in compliance with all material terms and conditions under which such use is permitted, and none of the rights to use of the Intellectual Property is, to the best of the knowledge of the Limited Partnership, threatened to be terminated other than upon expiry of the licence or other agreement under which the Material Intellectual Property is used. For the purposes hereof, "Material Intellectual Property" means any Intellectual Property in respect of which, if the Limited Partnership lost the right of use, it would, individually or in the aggregate, cause a Material Adverse Business Effect.
- (17) **Leasehold Real Estate.** Schedule G which will be completed and provided prior to Initial Closing contains a complete and accurate list of all leases relating to Leasehold Real Estate, to which the Limited Partnership is a party, or by which it is bound, or in respect of which it is entitled to benefit. Hydro has been provided with copies of all such leases relating to the Leasehold Real Estate, including any amendments or additions thereto. The Limited Partnership is in good standing in all material respects under all such leases, including in respect of the payment of rent thereunder. In addition, to the best of knowledge of the Limited Partnership: (i) the landlords under such leases are not in breach of any of their obligations thereunder; and (ii) no set of facts exists which after notice or lapse of time or

both or otherwise would, if such lease was terminated by the landlord pursuant to such breach or default, result in a breach or default under any of such leases which would result in a Material Adverse Business Effect.

- (18) **Real Estate.** Schedule H which will be completed and provided prior to Initial Closing contains a complete and accurate list of all Real Estate (in which is specified the legal description, and the registered and beneficial owner thereof). All of the Real Estate is used in connection with the Business. Except as set out in Schedule H, none of the Real Estate is leased by the Limited Partnership to third parties.
- (19) **Insurance Policies.** All of the Property of the Limited Partnership, including the Collateral, is insured against loss or damage to the extent, and in the manner, described in Section 8.1(16). The proceeds of such policies are fully payable to the Limited Partnership, and Hydro has been named as a first loss payee under such policies, as its interests may appear.
- (20) **No Material Adverse Business Effect.** Since the Initial Closing Date, no event, condition or circumstance has arisen which has had a Material Adverse Business Effect.

Each of the representations and warranties contained in this Section 7.1 shall be deemed to be continually repeated by the Limited Partnership at the time of each Advance.

## **7.2 Survival of Representations and Warranties.**

All the representations and warranties of the Limited Partnership contained in Section 7.1 shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts owing hereunder have been repaid and the Credit Facilities have been terminated notwithstanding any investigation made at any time by or on behalf of Hydro.

## **7.3 Representations by Hydro.**



To induce the Limited Partnership to enter into this Agreement, Hydro represents and warrants to the Limited Partnership that each of the following representations and warranties is true and correct.

- (1) Hydro is a corporation duly incorporated and organized and validly subsisting under the laws of Manitoba and has the corporate power and authority to own or lease its property and to enter into this Agreement and each of the other Loan Documents to which it is a party and to perform its obligations hereunder and thereunder.
- (2) This Agreement and the Loan Documents to which Hydro is a party have been duly authorized, executed and delivered by Hydro and are legal, valid and binding obligations of Hydro, enforceable against Hydro by the Limited Partnership to the extent that the Limited Partnership is a party thereto, in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction or, by this Agreement, at the discretion of the Arbitrator.
- (3) Subject to obtaining the Authorizations described in Schedule L, the execution and delivery of this Agreement and each of the Loan Documents to which Hydro is a party and the consummation of the transactions herein provided for by Hydro will not result in:
  - (a) the breach or violation of any other provisions of or constitute a default under or conflict with or cause the acceleration of any obligation of Hydro under,
    - (i) any contract to which Hydro is a party or by which it, or any of its property, is bound;
    - (ii) any provision of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) of Hydro;
    - (iii) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over Hydro; or

- (iv) any applicable law, statute, ordinance, regulation or rule, including, without limitation, the *Hydro Act*; or
  - (b) the creation or imposition of any encumbrance on any investment transaction or any of the property or assets of Hydro, except as contemplated by the Loan Documents.
- (4) Hydro is a resident of Canada for the purposes of the Income Tax Act (Canada).
- (5) There is no requirement for Hydro to make any filing with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of any government regulatory authority as a condition to the lawful consummation by Hydro of the transactions contemplated by this Agreement and each other Loan Document to which it is a party, except as described in Schedule L.

Each of the representations and warranties contained in this Section 7.3 shall be deemed to be continually repeated by Hydro at the time of each Advance.

#### **7.4 Survival of Representations and Warranties.**

All the representations and warranties of Hydro contained in Section 7.3 shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts owing hereunder have been repaid by the Limited Partnership and the Credit Facilities have been terminated, notwithstanding any investigation made at any time by or on behalf of the Limited Partnership.

### **ARTICLE VIII**

#### **COVENANTS OF THE LIMITED PARTNERSHIP**

##### **8.1 Affirmative Covenants.**

So long as any amount owing under the Loan Documents remains unpaid or Hydro has any Credit Facility Commitment under this Agreement, and unless Hydro shall otherwise consent, the Limited Partnership shall:

- (1) **Financial Reporting and Deliveries.** Cause to be delivered to Hydro the following documents:

Annual Financial Statements

- (a) as soon as available, and in any event within one hundred and twenty (120) days after the end of each Financial Year, the audited financial statements (including, at a minimum, a balance sheet, income statement and statement of changes in financial position) of the Limited Partnership for such Financial Year, prepared in accordance with GAAP and subject to an unqualified opinion of the Auditors provided however, that if the application of Hydro's accounting policies and practises to the Limited Partnership are not in compliance with GAAP, the Limited Partnership shall not be liable to Hydro for any breach of this covenant caused by the application of Hydro's accounting policies and practises to the Limited Partnership; and

Quarterly Financial Statements

- (b) as soon as available, and in any event within sixty (60) days after the end of each Financial Quarter (excluding the last Financial Quarter of a Financial Year), the unaudited financial statements (including, at a minimum, a balance sheet, income statement and statement of changes in financial position) of the Limited Partnership prepared in accordance with GAAP.

- (2) **Additional Reporting and Deliveries.** Cause to be delivered to Hydro, the following documents:

- (a) with each delivery of the financial statements referred to in Section 8.1(1)(b), a Compliance Certificate of the General Partner for and on behalf of the Limited Partnership, in the form attached hereto as Schedule B, together with an updated Schedule I where there has been any change to the information contained in Schedule I since the last Schedule I delivered to Hydro;

- (b) a copy of each management letter or report submitted to the board of directors (or any committee thereof) or senior management of any of the Limited Partnership or the General Partner by the Auditors in connection with any annual, interim or special audit made by them of the books of the Limited Partnership, together with the related response of the Limited Partnership, to be delivered promptly upon the issuance of the response of the Limited Partnership;
- (c) promptly upon receipt thereof, a copy of each environmental report or audit in respect of any Real Estate (whether owned or leased by the Limited Partnership) and used for or in connection with the Wuskwatim Project submitted to the Board of directors (or any committee thereof) of the General Partner;
- (d) promptly after the occurrence of each Event of Default, a statement of the Limited Partnership setting forth the details of such Event of Default and the action which such parties propose to take or have taken with respect thereto;
- (e) promptly after the commencement thereof, Notice of Claims which have been commenced (notice of which has been served on the Limited Partnership or the General Partner), or to the best of the knowledge of the Limited Partnership or the General Partner, are pending or threatened affecting the Limited Partnership or any of the Collateral, for amounts which exceed \$500,000 in the aggregate at any time;
- (f) promptly after the occurrence of any material adverse development with respect to any Claims referred to in Section 8.1(2)(e), and in any event within three (3) days after the General Partner obtains knowledge of the occurrence thereof, notice thereof, and, to the extent Hydro requests, copies of all documentation relating thereto;
- (g) promptly upon request of Hydro evidence of the maintenance of all insurance required to be maintained by Section 8.1(16), including such originals or copies as Hydro may request of policies, certificates of

insurance, riders and endorsements relating to such insurance and proof of premium payments;

- (h) promptly following the mailing or receipt of any Notice or report, and immediately upon becoming aware of any default, or demand for payment under the terms of any Debt of the Limited Partnership, (other than Debt due to Hydro) all information pertaining to such default or demand, such as the date of the default or demand, the amount demanded, the facts and circumstances which caused such default or demand and copies of such Notice or report; and
- (i) such other information and reports relating to the Limited Partnership, its Property, or the Business, as Hydro may from time to time reasonably request.

(2) **Preserve Existence.** Preserve and maintain the Limited Partnership's partnership existence, and the General Partner's corporate existence, licences, permits and authorizations, necessary to carry on the Business.

(3) **Compliance with Laws and Governmental Licence Fees.** Comply, in all material respects, with the requirements of all applicable Laws, including environmental laws and all Governmental Licences issued to and held by the Limited Partnership or the General Partner, where a failure to comply with such applicable Laws will result in a Material Adverse Business Effect.

(4) **Payment of Taxes, Claims and Governmental Licence Fees.** Pay and discharge, before the same shall become delinquent: (i) all Taxes, governmental assessments, charges or levies and Claims imposed upon it or upon any of its Property; (ii) all lawful Claims which, if unpaid, might by Law become a Lien upon its Property, in each case except for any such Tax, assessment, charge, levy or Claim which would result in a Lien which is a Permitted Lien; and (iii) all fees payable to Governmental Entities or other authorities in connection with all Governmental Licences issued to and held by the Limited Partnership or the General Partner.

- (5) **Keeping of Books.** Keep, proper books, records and accounts, in which full and correct entries shall be made of all financial transactions of it in accordance with GAAP.
- (6) **Visitation and Inspection.** If, in the reasonable opinion of Hydro, an Event of Default has or may have occurred, at any reasonable time or times and upon reasonable prior notice given to the Limited Partnership by Hydro, permit Hydro or any of its authorized representatives, full and reasonable access to the premises of the Limited Partnership and use its best efforts to obtain any consents and waivers from any Person necessary to ensure such access, and to the Collateral and to discuss the business, affairs, finances and accounts of, and the compliance with the terms of this Agreement and the other Loan Documents by, the Limited Partnership or the General Partner with the management and Auditors thereof.
- (7) **Condition of Property.** Keep, its Property, in all material respects in good repair, working order and condition (reasonable wear and tear excepted) and, from time to time, make all necessary repairs, renewals and replacements thereto.
- (8) **Protect Hydro's Liens.** At all times take all action and supply Hydro with all information necessary to allow Hydro to create, maintain, perfect, protect and preserve the Liens provided for under the Security Documents and confer upon Hydro the security interest intended to be created thereby.
- (9) **Payments.** Pay all amounts of principal, interest, costs and expenses on the dates, at the times and at the places specified in this Agreement or under any other Loan Document.
- (10) **Use of Proceeds.** Apply the proceeds of the Credit Facilities only in accordance with Sections 2.4, 3.4 and 4.4 or as otherwise expressly permitted by Hydro.
- (11) **Notice of Distributions.** Provide seven (7) Business Days prior written notice of any Distributions by the Limited Partnership.
- (12) **Payment of Preferred Claims.** Pay all amounts for Taxes, wages, vacation pay, severance pay, termination pay, workers' compensation obligations, government royalties or pension fund obligations and any other amount in respect of which

non-payment may result in a Lien on any of the Property under applicable Law, which has or could have priority over the Security Documents.

- (13) **Construction Liens.** Comply with the provisions of the *Builders Liens Act* (Manitoba) and take all such steps as are required to keep the Real Estate free and clear of all construction Liens or builders' Liens.
- (14) **Material Agreements.** Comply with the provisions of all Material Agreements and Future Material Agreements (as defined below). In respect of each Material Agreement executed after the date hereof (each a "**Future Material Agreement**"), provide to Hydro: (i) a certified copy of each Future Material Agreement, certified by the General Partner for and on behalf of the Limited Partnership; and (ii) written consent if required by the terms of the Future Material Agreement (dated as of the date of such Future Material Agreement) to the assignment of such Future Material Agreement to Hydro, as security from each party to such Future Material Agreement that is not the Limited Partnership, in form and substance satisfactory to Hydro, in its sole discretion.
- (15) **Insurance.**
- (a) Maintain in force with reputable and creditworthy insurers, insurance coverage of the nature and kind and in such amounts as is customary and prudent for companies engaged in the same or similar business in the same jurisdiction as the Limited Partnership. All such insurance of the Limited Partnership shall be in such form and scope as Hydro may reasonably require, shall contain the Insurance Bureau of Canada standard mortgage clause and shall name Hydro as its interests may appear, as loss payee. All such insurance shall also provide that: (A) if it is cancelled or amended in any adverse respect, or the same is allowed to lapse for non-payment of premium, the cancellation, amendment or lapse shall not be effective as to Hydro for thirty (30) days after notice of such cancellation, amendment or lapse is provided to Hydro from the insurers, or as otherwise agreed by Hydro; and (B) in respect of the interest of Hydro in such insurance, the insurance shall not be invalidated by any action or inaction of Hydro. The

Limited Partnership shall use its best efforts to cause such insurance to also provide that the insurers waive all rights of defence, set-off, counterclaim or abatement, legal or equitable, against Hydro in connection with the obligations of the insureds to make payments under such insurance but without prejudice to the insurers' right to maintain a separate action against the named insured for any unpaid premium with respect to such insurance;

- (b) Cause the insurance proceeds under all policies required to be maintained hereunder to be made payable to Hydro as loss payee as its interests may appear and otherwise deal with such policies in such manner as to enable all insurance proceeds payable thereunder in respect of the Collateral or otherwise to be paid to and collected by Hydro. The net proceeds received by Hydro (after deducting any expenses incurred in a collection or handling of such proceeds) under any property insurance policies shall be applied as follows:
  - (i) if an Event of Default shall have occurred and is continuing, and one or more of the Credit Facilities are then due and owing, the entire net proceeds of any insurance claim received by Hydro (other than the proceeds of business interruption insurance, which shall be used for its intended purpose) shall, at the option of Hydro, be applied towards repayment of the Credit Facilities which are due and owing without penalty, bonus or premium, and any excess amount remaining after repayment of the Credit Facilities shall be remitted to the Limited Partnership forthwith; or
  - (ii) if no Event of Default shall have occurred and be continuing and so long as (A) the insurance proceeds are sufficient to fully restore the Collateral, and (B) the Limited Partnership is able, whether from proceeds of business interruption insurance or otherwise, to continue to make the principal and interest payments owing hereunder when due and payable, then the net proceeds of any claim of less than \$1,000,000 shall be released to the Limited Partnership to be used



solely for repairing and restoring the Collateral which is subject to the claim (or claims), (unless otherwise agreed to by Hydro and the Limited Partnership) and the net proceeds of any claim of more than \$1,000,000 shall be held by Hydro for the benefit of the Limited Partnership and shall be advanced from time to time, but not more often than weekly, against a requisition or other evidence of restoration or repair of the Collateral which is subject to the claim (or claims), including architects' or engineers' certificates and copies of invoices for work and materials used in connection therewith, as Hydro may, in its sole discretion, reasonably require. In no event, however, shall any advance of any such proceeds be made which will result in the funds remaining with Hydro or payable to Hydro under the policies being less than the cost of completion or restoration of the Collateral as estimated by an architect or engineer satisfactory to Hydro. If, upon completion of restoration of the Collateral, there remain funds with Hydro, Hydro shall release the remaining funds to the Limited Partnership. Hydro shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy unless such failure is caused by the gross negligence or willful misconduct of Hydro, in which event Hydro shall also indemnify and save harmless the General Partner and the Limited Partnership for any losses or costs arising out of such failure;

- (iii) If the insurance proceeds are not sufficient to restore the Collateral, then the entire net proceeds of any insurance claim received by Hydro, shall at the option of Hydro, be applied towards repayment of the Credit Facilities without penalty, bonus or premium, and any excess amount remaining after repayment of the Credit Facilities shall be remitted to the Limited Partnership for its use. If Hydro does not exercise its option to apply, the net proceeds of the insurance claim towards repayment of the Credit Facilities the net proceeds shall be used in such manner as the parties may agree upon, each acting reasonably and have regard to the circumstances.

(c) Proceeds of liability insurance shall be paid to the Limited Partnership for the purposes of settling the Claim relating thereto or otherwise as required by any settlement, court order or conditions of the insurer and the proceeds of business interruption insurance shall be paid to the Limited Partnership; provided that such proceeds are used to carry on the Business or otherwise in accordance with this Section 8.1(16).

(16) **Notices of Default.** Immediately notify Hydro: (a) of any Event of Default or pending Event of Default, or of any material default (either by the Limited Partnership or by any other party) under any Material Agreement or Material Governmental Licence, or of any event which, with or without the giving of notice, lapse of time or any other condition subsequent, would be a material default under or would otherwise allow the termination of any Material Agreement or Material Governmental Licence and shall from time to time provide Hydro with all information reasonably requested by Hydro concerning the status thereof; (b) on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding, labour or industrial dispute or other circumstance affecting it, the result of which, if determined adversely, would have a Material Adverse Business Effect and shall from time to time provide Hydro with all reasonable information requested by Hydro concerning the status thereof.

(17) **Deposit for Debt Retirement.** The Limited Partnership shall deposit with Hydro in each fiscal year of Hydro during the term of this Agreement, commencing with the Hydro fiscal year in which the Final Closing occurs an amount equal to the total of:

- (a) the amount equal to one (1%) percent of the Total Outstandings with respect to the Non-Revolving Credit Facility (excluding any accrued and unpaid interest) outstanding as at March 31 of the fiscal year of Hydro immediately preceding the fiscal year of Hydro in which the payment is to be made by the Limited Partnership pursuant to this Section 8.1(17); plus
- (b) an amount equal to interest at the rate of four (4%) percent per annum on the balance of funds on deposit with Hydro including all accrued interest

(as determined in accordance with this Section 8.1(17)) as at March 31 in the fiscal year of Hydro immediately preceding the fiscal year of Hydro in which payment is to be made by the Limited Partnership pursuant to this Section 8.1(17); less

- (c) an amount equal to the total interest, as determined in accordance with this Section 8.1(17), which accrued on the balance of funds on deposit with Hydro, (excluding any interest amount which was paid to the Limited Partnership) for that period of time from March 31 in the fiscal year of Hydro immediately preceding the fiscal year of Hydro in which payment is to be made by the Limited Partnership pursuant to this Section 8.1(17), to the date of the said payment.

The balance of funds on deposit with Hydro (as determined in accordance with this Section 8.1(17)) shall accrue interest at the Deposit for Debt Retirement Interest Rate which shall be calculated and compounded semi-annually (not in advance) from and after the date of the first deposit made by the Limited Partnership pursuant to this Section 8.1(17)(a). On March 31 of each Hydro fiscal year Hydro shall charge as a fee to the Limited Partnership an amount equal to the balance of funds on deposit with Hydro as at March 31 (as determined in accordance with Section 8.1(17)), multiplied by the rate (expressed as a percentage rate per annum) charged as at the said March 31 date by Manitoba to Hydro as a fee for the servicing and management of Hydro's sinking fund reserves and the said funds on deposit with Hydro shall be reduced by the amount of this fee.

If in any fiscal year of Hydro for which a deposit is to be made by the Limited Partnership in accordance with the above noted provisions it is determined that the sum of the amounts calculated pursuant to Sections 8.1(17)(a) and 8.1(17)(b) for a particular fiscal year of Hydro (the "**Hydro Fiscal Year**") exceeds the difference between (i) the Total Outstandings with respect to the Non-Revolving Credit Facility (excluding any accrued and unpaid interest) outstanding as at March 31 of the fiscal year of Hydro immediately preceding the Hydro Fiscal Year and (ii) the balance of

funds on deposit with Hydro including accrued and unpaid interest (as determined in accordance with this Section 8.1(17)) as at March 31 of the fiscal year of Hydro immediately preceding the Hydro Fiscal Year, then the Limited Partnership shall deposit with Hydro an amount equal to (A) – (B) – (C), where (A) equals the said amount of the Total Outstandings with respect to the Non-Revolving Credit Facility (excluding any accrued and unpaid interest) outstanding as at March 31 of the fiscal year of Hydro immediately preceding the Hydro Fiscal Year, (B) equals the said balance of funds on deposit with Hydro including accrued and unpaid interest as at March 31 of the fiscal year of Hydro immediately preceding the Hydro Fiscal Year and (C) equals the total interest amount calculated pursuant to Section 8.1(17)(c) for that Hydro Fiscal Year or portion thereof.

During any period of time (the “**Funded Time Period**”) during which the balance of funds on deposit with Hydro including accrued and unpaid interest exceeds the Total Outstandings (excluding any accrued and unpaid interest) with respect to the Non-Revolving Credit Facility:

- (d) the requirement for the Limited Partnership to make a deposit or deposits pursuant to this Section 8.1(17) shall be suspended during the Funded Time Period; and
- (e) the interest which accrued during the Funded Time Period on the balance of funds on deposit (excluding any interest amount which was paid to the Limited Partnership) shall be paid by Hydro to the Limited Partnership.

The balance of funds on deposit with Hydro (as determined in accordance with this Section 8.1(17)) shall be used to offset the amount owing to Hydro under the provisions of the Loan Documents:

- (i) on the Maturity Date; or

- (ii) where Hydro has demanded repayment of the indebtedness of the Limited Partnership after an Event of Default has occurred and is continuing, the Cure Period has expired and the obligations of Hydro under the Credit Facilities have terminated in accordance with the provisions of the Loan Documents; and
- (iii) with such amount to be applied in accordance with the provisions of Section 12.4.

(18) **Further Assurances.** Upon request of Hydro duly execute and deliver or cause to be duly executed and delivered to Hydro such further instruments and other documents and do and cause to be done such further acts as may be necessary or desirable in the opinion of Hydro acting reasonably, to carry out more effectively the provisions and purposes of the Loan Documents.

## 8.2 **Negative Covenants.**

So long as any amount owing under the Loan Documents remains unpaid or Hydro has any Credit Facility Commitment under this Agreement and unless Hydro, as the case may be, shall otherwise consent, the Limited Partnership agrees not to:

- (1) **Business Activity.** Engage in any business activity except the Business.
- (2) **Liens.** Create, incur, assume or suffer to exist, any Lien on any of its Property other than Permitted Liens.
- (3) **Disposal of Property.** Dispose of any of its Property without the prior written consent of Hydro except that, as long as no Event of Default has occurred and is continuing, the Limited Partnership may dispose of Property at fair market value to an arm's length purchaser in the ordinary course of the Business if after giving effect to the disposition, the Disposed Property will not exceed \$1,000,000. Provided however, that nothing herein shall require Hydro's consent hereunder to the sale of power by the Limited Partnership in the ordinary course of its Business subject to compliance at all times with the Material Agreements in respect of such sales.

- (4) **Sale and Leaseback.** Enter into, directly or indirectly, any Sale-Leaseback Transaction except in the ordinary course of its Business.
- (5) **Debt.** Create, incur, assume or suffer to exist, directly, contingently or otherwise, any Debt, other than: (i) Debt to Hydro; (ii) Purchase Money Debt in the ordinary course of its Business which together with all other Purchase Money Debt of the Limited Partnership then existing does not exceed \$2,000,000 in aggregate principal amount (including capitalized interest) except with Hydro's prior written consent; (iii) trade payables and other unsecured current liabilities incurred and payable in the ordinary course of the Business including liabilities under the Construction Agreement.
- (6) **Mergers.** Neither the General Partner nor the Limited Partnership shall reorganize, amalgamate, merge, consolidate or otherwise enter into any form of business combination with any other Person.
- (7) **Guarantees and Indemnities.** Guarantee or indemnify or give financial assistance in respect of, or incur any Contingent Liability in respect of, any Debt or any other obligations or liabilities of any other Person at any time other than: (i) Debt or indemnities to Hydro hereunder; or (ii) any guarantee or indemnity which is granted in the ordinary course of the Business; provided that all such guarantees and indemnities outstanding at such time would not result in liability to the Limited Partnership in excess of \$1,000,000 in the aggregate at such time.
- (8) **Investments.** Make or commit to make any direct or indirect passive Investment, except Permitted Financial Investments through Persons approved by Hydro, in its sole discretion.
- (9) **Distributions.** (i) Make or commit to make, any Distributions except for Distributions by the Limited Partnership to the Limited Partners in the manner contemplated by its distribution policy; nor (ii) make or commit to make any Distributions after the occurrence of an Event of Default; nor (iii) make, or commit to make any Distributions, in any other circumstances if, after the making of such Distributions, the Limited Partnership would not be able to meet its obligations under the Loan Documents, including payment obligations and

compliance with the financial covenants in Section 8.3 or if the making of such Distributions were to cause an Event of Default; nor (iv) make or commit to make any Distributions on or before the Final Closing Date; nor (v) make or commit to make any Distributions if the Debt Ratio is greater than 75%.

- (10) **Financial Year and Auditors.** Change its Financial Year end or the Auditors.
- (11) **Change in Constating Documents and Partnership Units.** Make any change in the Limited Partnership Agreement which would: (A) change the Units authorized for issuance; or (B) change the provisions of the Units; or (C) otherwise be detrimental to the rights or interests of Hydro under any of the Loan Documents.
- (12) **Material Agreements.** Amend, supplement, terminate or waive, or enter into any forbearance from exercising any rights with respect to, any of the terms of any Material Agreement.
- (13) **Change in Partnership Structure.** Permit any material change to the partnership structure of the Limited Partnership.

### **8.3 Financial Covenants.**

So long as any amount owing under the Loan Documents remains unpaid or Hydro has any Credit Facility Commitment under this Agreement, and unless Hydro shall otherwise consent, the Limited Partnership agrees that:

- (1) Subject to Section 8.3(2), the Debt Ratio will not be permitted at any time to exceed 75% (rounded to the nearest percentage point).
- (2) The Debt Ratio may increase up to 85% (rounded to the nearest percentage point) during the Initial Operating Period subject to the following conditions:
  - (i) no Distributions shall be made which shall cause the Debt Ratio to exceed 75%; and
  - (ii) the Debt Ratio shall be reduced so that it is no greater than 75% at the termination of the Initial Operating Period.

**ARTICLE IX**  
**SECURITY**

**9.1 Security.**

The General Partner shall have executed and delivered for and on behalf of the Limited Partnership the Security Documents to which it is a party and shall cause the General Partner, in its personal capacity, to execute and deliver the Security Documents to which it is a party in its personal capacity, with each of the said Security Documents to be in form and substance satisfactory to Hydro, acting reasonably, as and when required hereunder or under the Loan Documents to which either is a party, as continuing collateral security for the due, prompt and complete payment, performance and satisfaction by the Limited Partnership of all of its indebtedness, liabilities and obligations of every nature whatsoever (whether present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time due or accruing due, wheresoever and howsoever incurred, including any ultimate unpaid balance thereof, in any currency, and whether incurred prior to, at the time of or subsequent to the execution of this Agreement) to: (i) Hydro, in connection with this Agreement and the Loan Documents; and (ii) such other indebtedness, liabilities and obligations as the Limited Partnership and Hydro, may from time to time agree in writing (collectively the “**Obligations**”).

**9.2 Registrations.**

- (1) Hydro in its sole discretion, may register, file or record the Liens constituted by the Security Documents in all jurisdictions where such registration, filing, or recording is necessary or of advantage to the creation, perfection, preservation or protection of such Liens.
- (2) Hydro may renew such registrations, filings and recordings from time to time as and when required or of advantage, to keep them in full force and effect. The Limited Partnership acknowledges that the forms of the Security Documents have been prepared based upon the laws of the jurisdictions indicated therein as being applicable thereto in effect at the date hereof and that such Laws may change. The Limited Partnership agrees that, following prior notice to and consultation with the Limited Partnership, Hydro, shall have the right to require that the forms of the Security Documents be amended, restated or supplemented, at the expense



of the Limited Partnership, to reflect any changes in such Laws, whether arising as a result of statutory amendments or court decisions, in order to confer upon Hydro the Liens intended to be created thereby, in the sole discretion of Hydro, acting reasonably.

## ARTICLE X EVENTS OF DEFAULT

### 10.1 Events of Default.

If any of the following events, conditions or circumstances (each an “**Event of Default**”) shall occur and be continuing:

- (a) the Limited Partnership shall fail to pay any portion of the principal or interest or any costs or expenses or other amounts due hereunder or under any of the other Loan Documents on the date when such portion of the Total Outstandings are due hereunder or thereunder and such amount remains unpaid for a period of six (6) Business Days after Hydro notifies the Limited Partnership that the amount is overdue;
- (b) any representation or warranty or certification made or deemed to be made by the Limited Partnership or the General Partner in its personal capacity pursuant to or in connection with any of the Loan Documents delivered to Hydro shall prove to have been incorrect in any material respect when made or deemed to be made;
- (c) the Limited Partnership shall fail to comply with, perform or observe the financial covenants contained in Section 8.3;
- (d) the Limited Partnership or the General Partner in its personal capacity shall fail to perform or observe any other term, covenant or agreement contained in any of the Loan Documents on its part to be performed or observed and such failure shall remain unremedied for ten (10) Business Days (the “**Cure Period**”) after written notice thereof shall have been given to the Limited Partnership by Hydro; provided that the length of the Cure Period shall be extended by Hydro in its unfettered discretion where the Limited Partnership demonstrates to it that the breach is not capable of being cured within ten (10) Business Days but provides

Hydro, within ten (10) Business Days, with a plan for curing the breach within sixty (60) calendar days and in good faith implements such plan;

- (e) any of the Loan Documents, at any time, is not valid and enforceable or ceases to be valid or enforceable in whole or in part, or if any Lien intended to be created by any of the Security Documents is not or ceases to be a valid and perfected Lien having the ranking or priority contemplated thereby, or if the validity or enforceability of any of the Loan Documents or the validity or perfection of any such Lien shall be contested by any party thereto or any other Person (unless such contestation by such other Person is being opposed diligently, in good faith and by proper legal proceedings by Hydro with the assistance of the Limited Partnership and Hydro is provided with an opinion, reasonably satisfactory to Hydro, confirming the validity and enforceability of such Loan Document and/or the validity and perfection of the contested Lien, as the case may be), or if any Person (other than Hydro) obtains any interest in the Collateral or any part thereof (except for Permitted Liens) provided however, that this provision shall only be invoked where Hydro, acting reasonably, has determined that its inability to enforce the said Lien with its intended ranking or priority cannot be cured by Hydro within a reasonable period of time or without Hydro being materially adversely affected notwithstanding that the Limited Partnership has provided a written undertaking to assist Hydro in the manner set out therein to cure the inability of Hydro to enforce the said Lien with its intended ranking or priority;
- (f) with respect to Debt of the Limited Partnership under any one or more agreements other than the Debt under the Loan Documents, (i) the Limited Partnership shall fail to pay any principal, interest or other amount pursuant to the agreements governing such other Debt in an aggregate amount in excess of \$1,000,000 (or the equivalent amount in another currency) when such amount becomes due and payable (whether by scheduled maturity, required repayment, acceleration, demand or otherwise) and such failure shall continue after any applicable grace period specified in such agreement or agreements; or (ii) any other event, condition or circumstance shall occur and shall continue after any applicable grace period specified in such agreement or agreements, if the effect of such

event, condition or circumstance is to accelerate the maturity of such other Debt in an aggregate amount in excess of \$1,000,000 (or the equivalent amount in another currency); or (iii) other Debt of the Limited Partnership in an aggregate amount in excess of \$1,000,000 (or the equivalent amount in another currency) shall be declared to be due and payable prior to the stated maturity thereof under any such agreement or agreements;

- (g) the occurrence of any default, or any event or condition which, with the giving of notice or passage of time, or both would constitute a default under any Material Agreement, and such default shall continue unremedied after any applicable grace period specified in such Material Agreement;
- (h) the Limited Partnership or the General Partner shall: (i) become insolvent or generally not pay its debts as such debts become due; (ii) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors; (iii) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors; (iv) institute or have instituted against it any proceeding seeking (x) to adjudicate it a bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of its Property, and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within forty-five (45) calendar days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property) shall occur; or (v) take any action to authorize any of the foregoing actions;
- (i) a Notice is sent to the Limited Partnership or the General Partner from any creditor with respect to the intention of such creditor to enforce a Lien on any of the Collateral unless such Notice is being contested in good faith by appropriate

legal proceedings and such notice has not resulted in, or does not involve, any immediate danger of the sale, forfeiture or loss of any of the Collateral that is the subject of such notice;

- (j) any one or more judgments or orders in excess of \$500,000 (or the equivalent in another currency) in the aggregate, or any one or more orders, directives, letters of credit or other communications from any Governmental Entity which may be reasonably likely to require the Limited Partnership to expend an amount in excess of \$500,000 (or the equivalent amount in another currency) in the aggregate shall be rendered against the Limited Partnership, and either:
  - (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment(s) or order(s); or
  - (ii) there shall be any period of ten (10) consecutive Business Days during which a stay of enforcement of any such judgment or order, directive, letter or other communication by reason of a pending appeal or otherwise, shall not be in effect;
- (k) the audited financial statements of the Limited Partnership in respect of any Financial Year are qualified in any material adverse respect by the Auditors;
- (l) the loss, suspension or failure to renew any Material Governmental Licence held by the Limited Partnership or any agreement to which the Limited Partnership is a party, the effect of which would prohibit or otherwise restrict the Limited Partnership from conducting all or a material part of the Business;
- (m) the Limited Partnership is enjoined or restrained in any material way by an order of any Governmental Entity, arbitrator or board from conducting all or a material part of the Business;
- (n) the occurrence of a Material Adverse Business Effect; or
- (o) the occurrence of any event, condition of circumstance which, with the giving of notice or passage of time, or both and after the expiration of the applicable Cure Period would constitute an Event of Default;

then, and in any such event, Hydro shall be entitled, by written notice to the Limited Partnership:

- (i) terminate the obligation of Hydro to make further Advances under the Credit Facilities;

and/or (ii) demand repayment of all indebtedness of the Limited Partnership to Hydro under the Credit Facilities, whereupon the principal amount of all outstanding Advances, all interest accrued thereunder, and all fees and other amounts payable thereunder shall become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Limited Partnership; and/or (iii) enforce the Liens constituted by the Security Documents and any other security now or hereafter held by Hydro; provided, however, that upon any Event of Default specified in Section 10.1(h), the obligation of Hydro to make Advances hereunder shall automatically terminate and the principal amount of all outstanding Advances and all interest accrued hereunder, and all fees and other amounts payable under this Agreement shall automatically become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Limited Partnership. Hydro shall be required however to continue to make Advances under the Interconnection Credit Facility and under the Revolving Credit Facility (but not under the Non-Revolving Credit Facility) until written notice that an Event of Default has occurred has been provided to all parties to the Interconnection and Operating Agreement.

#### **10.2 Expense of Hydro.**

Upon the occurrence of any Event of Default which has not been waived and is continuing, Hydro may take any action Hydro considers advisable, acting reasonably, to remedy the effect of such Event of Default. All reasonable actual expenses, costs and charges incurred by or on behalf of Hydro including legal fees and expenses in connection with: (i) any remedial action taken pursuant to this Section; (ii) any obligation of the Limited Partnership or the General Partner to Hydro hereunder or under any other Loan Documents; or (iii) the realization of the Collateral, including all reasonable fees, court costs, receiver's or agent's remuneration, legal fees and expenses and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment of the Collateral, in all cases shall be added to and form a part of the Obligations.

#### **10.3 Remedies Cumulative.**

The remedies provided for in this Agreement and each other Loan Document are cumulative and do not exclude any other right or remedy provided by Law.

**ARTICLE XI**  
**DISPUTE RESOLUTION**

**11.1 General.**

All actual or apprehended disputes, differences or claims which arise under this Agreement or under any other Loan Document relating to the application, interpretation, meaning, alleged violation, performance or non-performance of this Agreement or any other Loan Document shall be settled by final and binding arbitration conducted pursuant to the provisions of this Article XI.

**11.2 Endeavour to Resolve.**

The parties to this Agreement agree that prior to bringing any dispute, difference or claim to arbitration pursuant to the provisions of this Article XI, they shall use reasonable efforts to resolve such dispute, difference or claim amongst themselves.

**11.3 Arbitration.**

A party to this Agreement (an “**Applicant**”) who wants to settle a dispute, difference or claim or apprehended dispute, difference or claim referred to in Section 11.1 (a “**Dispute**”) shall provide the other party a written notice (a “**Dispute Notice**”) which shall contain the following:

- (a) the name of the respondent;
- (b) a detailed description of the Dispute; and
- (c) the relief, remedy, redress or declaratory order sought.

A Dispute Notice shall be delivered within 180 days from when the Applicant knew or reasonably ought to have known of the existence of a Dispute, subject to the written agreement of the parties to this Agreement to extend this time limit. An Applicant who fails to deliver a Dispute Notice with respect to a Dispute within the prescribed period shall be deemed to have waived and abandoned the Dispute.

**11.4 Reply.**

The party who receives a Dispute Notice (a “**Respondent**”) shall, within 60 days of receiving the Dispute Notice, provide the Applicant with a written reply (a “**Reply**”), which sets out in detail the Respondent’s position with respect to the Dispute.

**11.5 Referral to Arbitration.**

Within 30 days of the Applicant’s receipt of the Reply, if the Dispute has not been settled, the Dispute shall be referred to binding arbitration pursuant to the provisions of *The Arbitration Act* (Manitoba) and the following sections of this Article XI, provided that if there is any inconsistency between the provisions of the said Act and the said sections, the provisions of the said sections shall prevail.

**11.6 Appointment of Arbitrator**

Subject to Section 11.5, an Arbitrator shall be appointed to adjudicate the dispute, using the following procedure:

- (1) the Applicant shall provide to the Respondent and the Respondent shall provide to the Applicant the names, addresses and occupations of not more than three individuals, each of whom it would accept as an Arbitrator;
- (2) if any one of the persons on the list of proposed arbitrators is acceptable to the Applicant and the Respondent and is willing and able to act as the Arbitrator, then that person shall be appointed as the Arbitrator forthwith; and
- (3) if within 45 days of the referral of the Dispute to the binding arbitration the Applicant and the Respondent cannot agree upon a person to act as Arbitrator, either of them may request that the Arbitrator be appointed by the Chief Justice or the Associate Chief Justice of the Court of Queen’s Bench (Winnipeg Division) by application to the said court served on the other party to the arbitration.

**11.7 Qualifications of Arbitrator.**

An Arbitrator appointed pursuant to Section 11.6 shall:

- (a) be qualified to decide the particular question in dispute;

- (b) not have a pecuniary interest in the particular matter in dispute; and
- (c) not have had, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to Section 11.3, acted or been a member of a firm that has acted as solicitor, counsel or agent for any of the parties to this Agreement.

**11.8 Length of Hearing.**

The Arbitrator once appointed shall proceed expeditiously to hear and determine the question or questions in dispute as set out in the Dispute and Reply, subject to any reasonable delay due to, or resulting from, any unforeseen circumstances.

**11.9 Place of Hearing.**

The arbitration shall take place at such location, place and time as the parties to this Agreement may agree or as the Arbitrator shall fix. The law applicable to the arbitration shall be the Laws of Manitoba and the Laws of Canada applicable in Manitoba.

**11.10 Powers of the Arbitrator.**

The Arbitrator may determine all questions of law, fact and jurisdiction and all matters of procedure relating to the arbitration. The Arbitrator shall have the right to grant all legal and equitable relief necessary to provide a final and conclusive resolution of the Dispute including, without limitation, the right to relieve, on just and equitable terms, if applicable, against breaches of time limits set out in this Agreement or any other Loan documents, the right to determine, if applicable, the monetary value of any loss or injury suffered by a party to this Agreement and to make an order directing a party to pay the monetary value of any loss or injury so determined and to award costs (including legal fees and the costs of the arbitration) and interest. Except as the parties to this Agreement or any other Loan Document otherwise expressly agree, the Arbitrator shall not have the authority or jurisdiction to change, alter, or amend this Agreement or any term or provision contained herein or therein but shall have the authority to resolving inconsistencies between any such agreements or any terms or provisions contained therein.

**11.11 Counsel.**



The parties may be represented by counsel.

**11.12 Evidence.**

Evidence submitted in an arbitration may be presented in writing or orally. The parties to this Agreement at a minimum shall disclose all relevant information and documents as would be compellable in a court of law. The Arbitrator may require relevant information and documents to be disclosed by either party to this Agreement, either prior to or during a hearing, except such documents as would not be compellable if the action were brought in a court of law.

**11.13 Arbitration Award.**

The Arbitrator shall deliver the award within 90 days following the completion of the hearing.

**11.14 Award Final.**

The decision of the Arbitrator shall be final and binding on both parties to this Agreement. The right of any affected party to this Agreement to appeal an award will be limited to a question of law, provided that leave is first obtained from the Court of Queen's Bench based on the criteria listed in Section 44 of *The Arbitration Act* (Manitoba).

**11.15 Costs of Arbitration.**

Each party to this Agreement shall bear its own costs and an equal share of the costs of the Arbitrator, subject to a different award as to costs by the Arbitrator made following the completion of the arbitration.

**11.16 Performance of Obligations.**

Each party to this Agreement agrees to continue performing its obligations under this Agreement which is the subject matter of the arbitrator while any Dispute is being resolved or arbitrated, subject to any interim order to the contrary issued by the Arbitrator.

**11.17 Confidentiality.**

All hearings before the Arbitrator shall be closed to the public. All statements and evidence submitted for the arbitration, the decision of the Arbitrator, the fact of the arbitration

itself and all other aspects regarding the arbitration shall be kept strictly confidential except as otherwise required by applicable Law or agreed to by the parties to this Agreement.

**11.18 Arbitrator's Undertaking.**

Upon appointment, every Arbitrator shall swear or affirm an undertaking in the form set forth in Schedule K.

**11.19 Vacancy**

Where a vacancy occurs in the office of the Arbitrator after the commencement of proceedings, the proceedings need not recommence but may, with the unanimous consent of the parties to this Agreement continue before a replacement Arbitrator. In the absence of such unanimous consent, the arbitration must recommence as if it were a new matter before a new Arbitrator.

**11.20 Days**

The word "days" wherever used in this Article XI shall mean calendar days.

**ARTICLE XII**

**PAYMENTS, COMPUTATIONS AND INDEMNITIES**

**12.1 Timing of Payments.**

Unless otherwise expressly provided in this Agreement, the Limited Partnership shall make any payment required to be made by it to Hydro by depositing the amount of such payment in the bank account of Hydro designated for such purpose by Hydro, as applicable, on or before 11:00 a.m. (Winnipeg time) on the date such payment is due.

**12.2 Payments on Non-Business Days.**

Whenever any payment with respect to the Non-Revolving Credit Facility or the Interconnection Credit Facility shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall not be included in the computation of interest unless an Event of Default has then occurred and is continuing, in which event such extension of time shall be included in the computation of

interest. Whenever any payment with respect to the Revolving Credit Facility shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and any such extension of time shall be included in the computation of interest.

**12.3 Overdue Amounts.**

All amounts owed by the Limited Partnership to Hydro which are not paid when due (whether at stated maturity, on demand, by acceleration or otherwise) shall bear interest (both before and after judgment) from the date on which such amount is due until such amount is paid in full, at a rate per annum equal at all times, (i) in the case of amounts payable in Canadian Dollars, to the corresponding Canadian Thirty Year Rate or Interconnection Credit Project Rate, if established at that time for the overdue amount or, if applicable, the rate established pursuant to Section 5.4(e) (otherwise at the Canadian Dollar Floating Rate), and (ii) in the case of amounts payable in U.S. Dollars, to the corresponding U.S. Thirty Year Rate if established at that time for the overdue amount or, if applicable, the rate established pursuant to Section 5.5(e) (otherwise at the U.S. Dollar Floating Rate).

**12.4 Application of Payments, Repayments and Prepayments.**

All amounts received by Hydro from or on behalf of the Limited Partnership, including from realization by Hydro on the Collateral, and not previously applied pursuant to this Agreement shall be applied by Hydro as follows:

- (a) first, in reduction of the Limited Partnership's obligation to pay any actual costs, expenses, charges, reimbursable or indemnified amounts or Losses which are due and owing to Hydro;
- (b) second, in reduction of the Limited Partnership's obligation to pay any unpaid interest accrued on the principal amount of Advances or on any other amount owing hereunder;
- (c) third, in reduction of the Limited Partnership's obligation to pay any amounts due and owing on account of the principal amount of all Advances; and

- (d) fourth, to the Limited Partnership or such other Persons as may lawfully be entitled to the remainder or as any court of competent jurisdiction may otherwise direct.

**12.5 Computations of Interest and Fees.**

- (1) All computations of interest shall be made by Hydro taking into account the actual number of days occurring in the period for which such interest is payable pursuant to Article 5 except where interest is calculated and compounded semi-annually (in which case the computation of interest shall be made based on the semi-annual interest computation and not the number of days in the six month period) and, (i) if the Advance is made and outstanding in Canadian Dollars on the basis of a year of 365 days; and (ii) if the Advance is made and outstanding in U.S. Dollars on the basis of a year of 360 days.
- (2) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the aggregate “interest” (as defined in Section 347 of the *Criminal Code* (Canada), as the same may be amended, replaced or re-enacted from time to time) payable under this Agreement exceed the maximum amount of interest on the “credit advanced” (as defined in that Section) under this Agreement lawfully permitted under that Section and, if any payment, collection or demand pursuant to this Agreement in respect of “interest” (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand shall be refunded to the Limited Partnership. For purposes of this Agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the relevant Advance is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of any dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Hydro will be conclusive for the purposes of such determination.
- (3) Each determination by Hydro of any amount payable hereunder by the Limited Partnership shall be prima facie evidence of the amount payable for all purposes absent error.

## **12.6 Costs and Expenses.**

The Limited Partnership shall, if the transactions hereby contemplated are consummated, pay all actual costs and expenses of Hydro, including, without limitation, administration costs and expenses, of Hydro and legal fees and expenses of Hydro in respect of the Limited Partnership and the preparation, execution, delivery, registration, filing, recording or enforcement of, and refinancing, renegotiation, waiver, amendment or restructuring, or ongoing administration of the Credit Facilities and of the Loan Documents (including the maintenance of the Liens provided for therein and all future registrations, filings, recordings and other actions in connection therewith) or assigning the Credit Facilities. Hydro shall bear its own costs and expenses if the transactions hereby contemplated are not consummated.

## **12.7 Indemnity for Change in Circumstances.**

- (1) If with respect to Hydro: (i) any change in Law, or any change in the interpretation or application by any Governmental Entity of any Law occurring or becoming effective after the date hereof; or (ii) any compliance by Hydro with any direction or requirement of any Governmental Entity made or becoming effective after the date hereof, shall have the effect of causing Loss to Hydro by:
  - (a) increasing the actual cost to Hydro of performing its obligations under this Agreement or in respect of any Advance; or
  - (b) reducing any amount payable to Hydro under this Agreement or in respect of any Advance by any amount it deems material,

then Hydro may give notice to the Limited Partnership specifying the nature of the event giving rise to such Loss and providing supporting calculations to substantiate the amount of the Loss and the Limited Partnership shall, on demand, pay the amount of the Loss to Hydro. A certificate as to the amount of any such Loss submitted in good faith by Hydro to the Limited Partnership together with reasonable particulars as to the event giving rise to the Loss and providing the supporting calculations to substantiate the amount of the Loss, shall be prima facie evidence of the amount of such Loss for all purposes absent error.

- (2) Except as required by applicable Law, the Limited Partnership shall make all payments under this Agreement to Hydro, as the case may be, without deducting or withholding of any Taxes. To the extent that deduction or withholding of Taxes is required by applicable Law, the Limited Partnership will:
- (a) promptly notify Hydro of such requirement;
  - (b) pay to the appropriate authority the full amount required to be so withheld or deducted before penalties attach thereto or interest accrues thereon;
  - (c) promptly forward to Hydro an official receipt or other documentation reasonably satisfactory to Hydro evidencing such payment to such authority; and
  - (d) pay to Hydro an additional amount so that Hydro receives the full amount they would have received had no such deduction or withholding been required.

If any Taxes are directly asserted against Hydro with respect to any payment under this Agreement, Hydro, may pay such Taxes and the Limited Partnership shall promptly pay such additional amount (including any penalties, interest and expenses) necessary so that the net amount received by Hydro after the payment of such Taxes, including any Taxes on such additional amounts, shall equal the amount Hydro would have received had Hydro not paid such Taxes.

The Limited Partnership will indemnify Hydro for all incremental Taxes, interest or penalties that Hydro must pay if the Limited Partnership fails to deduct or withhold any Taxes when due or to send Hydro the required receipts or other documentation.

Hydro acknowledges that in respect of this Section 12.7(2), Taxes shall not include any income taxes that may be payable by Hydro. Hydro shall remain solely obligated to pay and shall save the Limited Partnership harmless from any income taxes that may be asserted against Hydro or payable by Hydro, including with respect to any payments or amounts received or made under this Agreement.

**12.8 Indemnity for Transactional and Environmental Liability.**

- (1) The Limited Partnership hereby agrees to indemnify, exonerate and hold Hydro and its officers, directors, employees, agents and other representatives (collectively in this Section 12.8(1) and in Section 12.8(2), the “Indemnified Parties”) free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 12.8(1), the “**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them or, with respect to, or as a direct or indirect result of: (i) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Advances obtained hereunder; or (ii) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document, except for such Indemnified Liabilities that a court of competent jurisdiction determines or rules to be on account of the relevant Indemnified Party’s gross negligence or willful misconduct or any Person for whom such Indemnified Party is responsible at law (in which event such Party shall indemnify and save harmless the General Partner and the Limited Partnership for all Indemnified Liabilities paid, incurred or suffered by, or asserted against any of them arising out of such gross negligence or willful misconduct).
- (2) The Limited Partnership hereby further agrees to indemnify, exonerate and hold the Indemnified Parties free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified party is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 12.8(2), the (“**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them for, with respect to, or as a direct or indirect result of any environmental

liabilities and actual costs and expenses except where a court of competent jurisdiction determines or rules that the environmental liabilities and actual costs and expenses were caused by or due to the gross negligence or willful misconduct of any Indemnified Party or any Person for whom such Indemnified Party is responsible at law ( in which event such Party shall indemnify and save harmless the General Partner and the Limited Partnership, for all Indemnified Liabilities paid, incurred or suffered by, or asserted against any of them arising out of such gross negligence or willful misconduct).

- (3) All obligations provided for in this Section 12.8 shall not be reduced or impaired by any investigation made by or on behalf of Hydro.
- (4) If, for any reason, the obligations of the Limited Partnership pursuant to this Section 12.8 shall be unenforceable, the Limited Partnership agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or willful misconduct of any Indemnified Party or any Person for whom such Indemnified Party is responsible at law (in which event such Party shall indemnify and save harmless the General Partner and the Limited Partnership, for all Indemnified Liabilities paid, incurred or suffered by, or asserted against any of them arising out of such gross negligence or willful misconduct).

#### **12.9 Survival of Indemnities; Contribution.**

- (1) The provisions of Sections 12.7, 12.8 and this Section 12.9 shall survive the termination of this Agreement and the repayment of all amounts owing pursuant to the Loan Documents.
- (2) If any provision in any of the Loan Documents providing for indemnification by the Limited Partnership (the “**Indemnitor**”) in favour of Hydro or any of the Indemnified Parties (as defined in Section 12.8) (the “**Indemnitee**”) is found by reason of the occurrence of an event, other than the negligence or willful misconduct of the Indemnitee, to be unenforceable by a court of competent jurisdiction in a final judgment that has become non-appealable, then the



Indemnitor shall contribute to the amount paid or payable by the Indemnitee which is subject to the indemnification provision in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor on the one hand and the Indemnitee on the other hand but also the relative fault of the Indemnitor and the Indemnitee. The rights of contribution herein provided shall be in addition to and not in derogation of any other right to contribution which the Indemnitee may have under this Agreement or applicable Laws.

**12.10 Judgment Currency.**

- (1) If, for the purposes of obtaining judgment in any court, it is necessary to convert any sum due, or owing hereunder or under any other Loan Document to Hydro in any currency (the “**Original Currency**”) into another currency (the “**Other Currency**”), the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures Hydro could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is granted.
- (2) The obligations of the Limited Partnership in respect of any sum due in the Original Currency from it to Hydro under any of the Loan Documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by Hydro of any sum adjudged to be so due or owing in such Other Currency, Hydro may in accordance with normal banking procedures purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due or owing to Hydro in the Original Currency, the Limited Partnership shall, as a separate obligation and notwithstanding any such judgment, indemnify Hydro, against such Loss, and if the amount of the Original Currency so purchased exceeds the sum originally due or owing to Hydro in the Original Currency, Hydro shall remit such excess to the Limited Partnership.

**ARTICLE XIII  
GENERAL PROVISIONS**

**13.1 Notices.**

- (1) All notices provided for in this Agreement or in the Loan Documents shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable addresses or facsimile numbers, as the case may be, set opposite the party's name in Schedule C hereto or at or to such other address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.
- (2) Each Borrowing Notice, shall be irrevocable and binding on the Limited Partnership. With respect to any Borrowing Notice, Hydro may act upon the basis of telephonic notice believed by it in good faith to be from the Limited Partnership prior to receipt of a Borrowing Notice.

**13.2 Time of the Essence.**

Time shall be of the essence of this Agreement.

**13.3 Third Party Beneficiaries.**

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the parties hereto and the Persons contemplated in Section 12.8 or Section 13.8, and no Person, other than the parties hereto and the

Persons contemplated in Section 12.8 or Section 13.8, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

**13.4 Enurement.**

This Agreement shall enure to the benefit of and be binding upon the parties hereto. This Agreement shall be binding upon any assigns and enure to the benefit of any permitted assigns.

**13.5 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

**13.6 Knowledge.**

Where any representation or warranty contained in this Agreement or any other Loan Document is expressly qualified by reference to the best of the knowledge of the Limited Partnership or the General Partner, or where any other reference is made herein or in any other Loan Document to the knowledge of the Limited Partnership or the General Partner, it shall be deemed to refer to the best of the knowledge of the members of the Board of Directors of the General Partner.

**13.7 Non-Merger.**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of the parties contained in this Agreement and the other Loan Documents shall not merge on and shall survive the Closing and the making of any Advance, and notwithstanding such Closing or Advance, or any investigation made by or on behalf of any party, shall continue in full force and effect. The making of any Advance shall not prejudice any right of one party against any other party in respect of anything done or omitted hereunder or under any of the other Loan Documents or in respect of any right to damages or other remedies.

**13.8 Assignment.**

Neither this Agreement nor any of the rights or obligations hereunder shall be assignable or transferable by the Limited Partnership or Hydro, except that Hydro may assign this Agreement to any Affiliate, on condition that withstanding the assignment, Hydro will remain jointly and severally liable with the said Affiliate, for compliance with the covenants of Hydro under this Agreement.

**13.9 Waivers and Amendments.**

Any term, covenant or condition of any of the Loan Documents may only be amended with the consent of the Limited Partnership and Hydro, or compliance therewith by the Limited Partnership may be waived (either generally or in a particular instance and either retroactively or prospectively) by Hydro and, in the event that any such amendment or waiver is approved by Hydro, the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as an Event of Default.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date first above written.

**WUSKWATIM POWER LIMITED  
PARTNERSHIP**, by its general partner  
**5022649 Manitoba Ltd.**

Per: 

Name: Ken R. F. Adams  
Title: Chairman

**THE MANITOBA HYDRO-ELECTRIC  
BOARD**

Per: 

Name: Robert B. Brennan  
Title: President and Chief Executive  
Officer

Per: 

Name: Robert D. Bettner  
Title: Assistant Corporate Secretary

SCHEDULE A

BORROWING NOTICE

To: THE MANITOBA HYDRO-ELECTRIC BOARD ("Hydro")

From: WUSKWATIM POWER LIMITED PARTNERSHIP (the "Limited Partnership")

This Borrowing Notice is delivered to you pursuant to Section 5.2 of the project financing agreement (the "Project Financing Agreement") dated ●, 2006 between the Limited Partnership, as borrower, and Hydro, as lender. All capitalized terms used in this Borrowing Notice and defined in the Project Financing Agreement shall have the meanings defined in the Project Financing Agreement.

1. The Limited Partnership hereby requests an Advance as follows:

- (a) Date of Advance: \_\_\_\_\_
- (b) Amount of Advance: \_\_\_\_\_
- (c) Type of Advance: \_\_\_\_\_
- (d) Payment Instructions: \_\_\_\_\_

2. The Limited Partnership hereby certifies that :

- (a) All of the representations and warranties of the Limited Partnership contained in Section 7.1 of the Project Financing Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of the date hereof (other than those representations and warranties in Section 7.1 which are specifically limited to a particular date) and except as disclosed in writing to, and accepted in writing by Hydro.
- (b) All of the covenants of the Limited Partnership contained in Article VIII of the Project Financing Agreement together with all of the conditions precedent to an Advance in Article VI of the Project Financing Agreement (to the extent they are within the Limited Partnership's control) have been complied with or met in all materials respects, except as disclosed in writing to, and accepted in writing by Hydro.
- (c) No Event of Default has occurred and is continuing on the date hereof nor will any Event of Default occur as a result of the aforementioned Advance, except as disclosed in writing to, and accepted in writing by Hydro.

DATED: Wuskwatim Power Limited Partnership,  
by its general partner 5022649 Manitoba Ltd.

Per: \_\_\_\_\_  
Name:  
Title:

SCHEDULE B

COMPLIANCE CERTIFICATE

TO: THE MANITOBA HYDRO-ELECTRIC BOARD (“Hydro”)

FROM: WUSKWATIM POWER LIMITED PARTNERSHIP (the “Limited Partnership”)

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This Compliance Certificate is delivered to you pursuant to Section 6.1(2) of the project financing agreement (the “Project Financing Agreement”) made ●, 2006 between the Limited Partnership, as borrower, and Hydro, as lender. All capitalized terms used in this Compliance Certificate and defined in the Project Financing Agreement shall have the meanings defined in the Project Financing Agreement.

1. The Limited Partnership hereby certifies that:

- (a) All of the representations and warranties of the Limited Partnership contained in Section 7.1 of the Project Financing Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of the date hereof (other than those representations and warranties in Section 7.1 which are specifically limited to a particular date) and except as disclosed in writing to, and accepted in writing by Hydro.
- (b) No Event of Default has occurred and is continuing on the date hereof, except as disclosed in writing to, and accepted in writing by Hydro.

DATED:

Wuskwatim Power Limited Partnership,  
by its general partner  
5022649 Manitoba Ltd

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE C

ADDRESSES FOR NOTICE

Wuskwatim Power Limited Partnership  
c/o 5022649 Manitoba Ltd.  
Attention: Chairman  
3<sup>rd</sup> Floor – 820 Taylor Avenue  
Winnipeg, MB  
R3C 2P4

Fax: (204) 474-4947

Manitoba Hydro  
Attention: General Counsel  
3<sup>rd</sup> Floor – 820 Taylor Avenue  
Winnipeg, MB  
R3C 2P4

Fax: (204) 474-4947

## SCHEDULE D

### LIST OF SECURITY DOCUMENTS

1. Demand Debenture granted by the General Partner
2. Demand Debenture granted by the Limited Partnership
3. Debenture Pledge Agreements between Hydro and each of the General Partner and the Limited Partnership
4. Assignment of Material Contracts
5. Beneficial Owner Acknowledgement and Direction



SCHEDULE E

REPAYMENT NOTICE

TO: THE MANITOBA HYDRO-ELECTRIC BOARD ("Hydro")

FROM: WUSKWATIM POWER LIMITED PARTNERSHIP (the "Limited Partnership")

This Repayment Notice is delivered to you pursuant to Section 3.7 of the project financing agreement (the "Project Financing Agreement") dated ●, 2006 between the Limited Partnership, as borrower, and Hydro, as lender. All capitalized terms used in this Repayment Notice and defined in the Project Financing Agreement shall have the meanings defined in the Project Financing Agreement.

1. The Limited Partnership hereby gives notice of repayment as follows:

(a) Date of repayment: \_\_\_\_\_

(b) Type of Advance being repaid: \_\_\_\_\_

(c) Amount of principal repayment: \_\_\_\_\_

Wuskwatim Power Limited Partnership,  
by its general partner  
5022649 Manitoba Ltd.

Per: \_\_\_\_\_

Name:

Title:

## SCHEDULE F

### MATERIAL AGREEMENTS

The following is a list of the Material Agreements as at the date hereof:

1. the PDA;
2. this Agreement, and the Debenture provided pursuant to this Agreement and the Assignment of the Power Purchase Agreement provided pursuant to this Agreement;
3. the Construction Agreement (annexed as Schedule 1-4 to the PDA);
4. the Power Purchaser Agreement (annexed as Schedule 1-5 to the PDA);
5. the Operations and Maintenance Agreement (annexed as Schedule 1-6 to the PDA);
6. the System Operations and Dispatch Agreement (annexed as Schedule 1-8 to the PDA);
7. the NCN Adverse Effects Agreement (annexed as Schedule 11-1 to the PDA);
8. the Management Agreement (annexed as Schedule 1-2 to the PDA);
9. an Assignment and Assumption of Costs and Liabilities Agreement dated June 28<sup>th</sup>, 2006 between the Limited Partnership and Manitoba Hydro;
10. an Omnibus General Assumption Agreement dated June 28<sup>th</sup>, 2006 between the Limited Partnership and Hydro;
11. the Limited Partnership Agreement (annexed as Schedule 1-1 to the PDA);
12. an Assignment dated June 28<sup>th</sup>, 2006 relating to the assignment of the Interconnection Letter Agreements and the Interconnection and Operating Agreement by Hydro through the Limited Partnership and the said agreements;
13. the agreements listed in Schedule "G";
14. the Wuskwatim Lands Transfer Agreement (annexed as Scheduled 6-11 to the PDA).

## SCHEDULE G

### LEASEHOLD REAL ESTATE

The Wuskwatim Power Limited Partnership is a party to the following leases of real property or to the granting of easements in respect of real property as of the date hereof:

1. the Transmission Lands Lease (annexed as Schedule 6-12 to the PDA );
2. the Access Road User Agreement (annexed as Schedule 6-13 to the PDA);
3. the Transmission Corridor Easement Agreement (annexed as Schedule 6-15 to the PDA);
4. Communications Tower Easement Agreement (annexed as Schedule 6-16 to the PDA);
5. Easement Agreement (annexed as Schedule A to the Wuskwatim Lands Transfer Agreement which is annexed as Schedule 6-11 to the PDA);
6. A Wuskwatim Lands Quarry Mineral Lease between the Limited Partnership and Her Majesty the Queen in Right of the Province of Manitoba, as represented by the Minister of Industry, Economic Development and Mines;
7. Access Road Transmission Easement Agreement between the Limited Partnership, as grantor, and Hydro.

## SCHEDULE H

### REAL ESTATE

The real property to be acquired pursuant to the Wuskwatim Lands Transfer Agreement (annexed as Scheduled 6-11 to the PDA) is the only Real Estate that the Wuskwatim Power Limited Partnership is or is entitled to be the owner of on the date hereof.

## SCHEDULE I

### UNIT HOLDERS

The issued and outstanding Units on the date hereof and registered holders of such Units are as follows:

5022649 Manitoba Ltd.	0.30303
Manitoba Hydro	2,030
TPC	1,000

As of the date hereof (and, for greater certainty, excluding Debt under or in connection with this Agreement and under or in connection with one or more of the other Material Agreements disclosed in Schedule F) the Wuskwatim Power Limited Partnership does not have any Debt within the meaning of the Agreement.

## SCHEDULE J

### LIABILITIES

As at the date hereof (and, for greater certainty, excluding Liabilities under or in connection with this Agreement or in connection with one or more of the other Material Agreements disclosed in Schedule F hereof) the Wuskwatim Power Limited Partnership does not have any Liabilities within the meaning of the Agreement.

SCHEDULE K

ARBITRATOR'S UNDERTAKING

FORM OF OATH OR UNDERTAKING OF THE ARBITRATOR

I, \_\_\_\_\_, do swear and affirm that I will well and truly try the matters referred to me as provided for by the Project Financing Agreement and The Arbitration Act (Manitoba) in the matter of:

(State particulars of the matter)

and make a true and impartial award, according to the evidence and my skill and knowledge.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Sworn or Affirmed before

A Commission, Notary, etc.

at \_\_\_\_\_

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SCHEDULE L  
AUTHORIZATIONS

1. Order in Council as required pursuant to the provisions of the Hydro Act.
2. Such Additional Borrowing Authorizations required from time to time.