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**NCN ADVERSE EFFECTS AGREEMENT**

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**between**

**NISICHAWAYASIIHK CREE NATION,**

**- and -**

**WUSKWATIM POWER LIMITED PARTNERSHIP,**

**- and -**

**THE MANITOBA HYDRO-ELECTRIC BOARD,**

**- and -**

**THE TASKINIGAHP TRUST,**

**DATED June 29, 2006**

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Schedule 7.1 - Wuskwatim Project Anticipated Affected Area

THIS MEMORANDUM OF AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_,  
2006,

**BETWEEN:**

**NISICHAWAYASIIHK CREE NATION,  
(hereinafter called "NCN")**

**-and-**

**WUSKWATIM POWER LIMITED PARTNERSHIP,  
(hereinafter called the "Limited Partnership")**

**-and-**

**THE MANITOBA HYDRO-ELECTRIC BOARD,  
(hereinafter called "Hydro")**

**-and-**

**THE TASKINIGAHP TRUST  
(hereinafter called the "Taskinigahp Trust")**

**WHEREAS:**

- A. **Hydro, NCN, Taskinigahp Power Corporation, 5022649 Manitoba Ltd. and the Limited Partnership** have entered into the PDA dated June 26, 2006 to develop, construct and operate the **Wuskwatim Project** ;
- B. In connection with the **Wuskwatim Project, Hydro** will be constructing the **Wuskwatim Project Related Transmission Facilities**;



- C. Article 8 of the **1996 NFA Implementation Agreement** sets out a process for **Hydro** and **NCN** to follow in respect of future development, as defined by that agreement;
- D. **Hydro** and **NCN** have followed the process set out in Article 8 of the **1996 NFA Implementation Agreement** in respect of the **Wuskwatim Project** and the **Wuskwatim Project Related Transmission Facilities**;
- E. **Hydro** and **NCN** have consulted extensively with **Members** and others in respect of the **Wuskwatim Project** and the **Wuskwatim Project Related Transmission Facilities**;
- F. Various licences and approvals from governmental authorities will be required in respect of the **Wuskwatim Project** and the **Wuskwatim Project Related Transmission Facilities**;
- G. The **Wuskwatim Project** and the **Wuskwatim Project Related Transmission Facilities** have been designed to minimize **Wuskwatim Adverse Effects**;
- H. The **Wuskwatim Project** and the **Wuskwatim Project Related Transmission Facilities** will nevertheless cause some **Wuskwatim Adverse Effects** to **NCN** and/or to **Members** which the **Parties** propose to address through the provisions of this **Agreement**;
- I. **NCN** has settled the **Taskinigahp Trust** for purposes of, among other things, holding and administering the **Settlement Proceeds** to be paid to **NCN** under this **Agreement**; and
- J. **NCN** has irrevocably assigned the **Settlement Proceeds** to the **Taskinigahp Trust** pursuant to the **NCN Deed of Assignment**.

Now therefore the **Parties** hereto agree as follows:

## ARTICLE 1 - AGREEMENT AND INTERPRETATION

### 1.1 AGREEMENT

1.1.1 Contents. The following schedules are attached to and form part of this **Agreement**:

Schedule 1.1	Financial Schedule
Schedule 4.1	Claim for Compensation Form
Schedule 4.2	Notice of Receipt of Claim for Compensation
Schedule 4.3	Report, Decision and Right to Appeal
Schedule 4.4	<b>Wuskwatim Claimant</b> Acceptance and Release
Schedule 4.5	Undertaking
Schedule 4.6	Referral to Arbitration
Schedule 5.1	Undertaking of <b>Arbitrator</b>
Schedule 6.1	Safety Measures
Schedule 6.2	Safety Measure Map
Schedule 7.1	<b>Wuskwatim Project</b> Anticipated Affected Area.

## 1.2 INTERPRETATION

1.2.1 Days. In this **Agreement**, all references to days are to calendar days.

1.2.2 Meaning. In this **Agreement**, all defined words and phrases beginning with a capital letter and printed in bold shall have the same definition as they have in the **PDA** with such modification as the change in context requires. For ease of reference, those terms which are defined in the **PDA** and which are also used in this **Agreement** have been repeated in Subsection 1.2.3 of this **Agreement**. In the event of any substantive conflict, which cannot be resolved based on the context, between the definitions used in the **PDA** and the definitions used in this **Agreement**, the definitions in the **PDA** shall prevail.

1.2.3 Definitions. Subject to Subsection 1.2.2 for the purposes of this **Agreement**, unless the context otherwise requires, the following terms when capitalized and printed in bold, shall have the meanings set out below, and grammatical variations of such terms shall have corresponding meanings:

“**Agreement**” or “**NCN Adverse Effects Agreement**” means this agreement including all schedules and all amendments hereto and extensions hereof;

“**Arbitrator**” means an arbitrator appointed in accordance with the procedure set out in Articles 4 and 5 of this **Agreement**;

“**Chief and Council**” means the Chief and Councillors elected and in office from time to time as the governing body of **NCN** pursuant to the **NCN Election Code**, and recognized as the “council of the band” as defined in subsection 2(1) of the *Indian Act* (Canada);

“**Closing Licenses**” means the following regulatory licenses, approvals and authorizations required for the development and operation of the **Wuskwatim Project**:

- (a) interim license issued under *The Water Power Act* (Manitoba);
- (b) environmental license issued under *The Environment Act* (Manitoba);
- (c) the review of the Wuskwatim Project, including the issuance of the comprehensive study report, required under the *Canadian Environmental Assessment Act* (Canada);
- (d) approval under the *Navigable Waters Protection Act* (Canada); and
- (e) authorization issued under the *Fisheries Act* (Canada);

and any licenses, permits, consents, approvals, certificates, registrations and authorizations required to be obtained from **Regulatory Authorities** in respect of the **Wuskwatim Transmission Project**;

“**Construction Start Date**” means the day that the Project Manager commences the work under the Construction Agreement;

“**Date of this Agreement**” means the date on which all of the **Parties** have executed this **Agreement** or, if all of the **Parties** have not executed this **Agreement** on the same date, the date on which the last of the **Parties** executes this **Agreement**;

“**Final Closing Date**” means the fifth business day following the **First Completion Date** or such earlier date as may be agreed to by the **Parties**;

“**First Completion Date**” means the date on which the first of the three turbine units comprising the **Wuskwatim Generating Station** is fully commissioned and comes into service as evidenced by a commissioning certificate issued in respect of that turbine by **Hydro’s** commissioning engineer;

“**Fundamental Features**” means the features of the **Wuskwatim Project** described in section 2.10 of this **PDA**;

“**Fundamental Operating Features**” means the **Fundamental Features** described in paragraph 2.10 (b) of the **PDA**;

“**General Civil Contract**” means the subcontract issued or to be issued by **Hydro** under the Construction Agreement to the general civil contractor for the construction of the **Wuskwatim Generating Station**;

“**Hydro**” means The Manitoba Hydro-Electric Board, a Crown corporation continued by *The Manitoba Hydro Act*, R.S.M. 1987, c. H190, as amended from time to time;

“**Limited Partnership**” means the limited partnership known as the Wuskwatim Power Limited Partnership created pursuant to the Initial Limited Partnership Agreement and to be amended and restated by the Limited Partnership Agreement, for the purposes of owning and directly or indirectly planning, designing, constructing, operating, and maintaining the **Wuskwatim Project**;

“**Member**” means a person who at the relevant time is, or who has applied and is entitled to be, a member of NCN pursuant to the membership code established by and for NCN pursuant to section 10 of the *Indian Act* (Canada), which membership code has been in force and of effect since May 24, 1988, or pursuant to any successor membership code established pursuant to legislation or lawfully adopted by NCN and “**Members**” means the group of persons each of whom is a **Member**;

“**NCN**” means the Nisichawayasihk Cree Nation, formerly known as the Nelson House First Nation;

“**NCN Deed of Assignment**” means an irrevocable assignment by NCN of certain entitlements arising from the **Wuskwatim Project**, as more particularly described therein, substantially in the form of the **NCN Deed of Assignment** attached as Schedule 16-1 to the **PDA**;

“**NCN Trustees**” means the individual trustees signatory to the **Taskinigahp Trust Indenture** and their respective successors in office, in accordance with Article 6 of the **Taskinigahp Trust Indenture**;

“**NFA**” means the Northern Flood Agreement;

“**1996 NFA Implementation Agreement**” means the agreement made between Canada, Manitoba, **Hydro** and NCN dated March 18, 1996 for the implementation and settlement of most of their respective obligations under the **NFA**;

“**OPCN**” means O-Pipon-Na-Piwin Cree Nation, the First Nation comprised of former **Members** and others residing at South Indian Lake which was constituted as a band under the *Indian Act* (Canada), independent of NCN, on December 22, 2005;

“**PDA**” means the Project Development Agreement entered into among **Hydro**, NCN, Taskinigahp Power Corporation, 5022649 Manitoba Ltd. and the **Limited Partnership** dated June 26, 2006 to develop, construct and operate the **Wuskwatim Project**;

“**Party**” means any of **Hydro, NCN, the Limited Partnership and the Taskinigahp Trust**;

“**Regulatory Authorities**” means all appropriate federal, provincial, municipal or other governmental or administrative bodies from which any licenses, permits, consents, approvals, certificates, registrations and authorizations are required to be obtained in respect of the **Wuskwatim Project and the Wuskwatim Transmission Project**, including without limitation, the **Closing Licenses**;

“**Reserve**” shall have the meaning ascribed thereto in the *Indian Act* (Canada) and for the purposes of this **Agreement** shall mean that reserve or those reserves set apart for the use and benefit of **NCN**;

“**Settlement Proceeds**” means the principal amounts and any interest earned thereon and other subsequent amounts paid pursuant to this Agreement to the **Taskinigahp Trust** (on behalf of **NCN** pursuant to the **NCN Deed of Assignment**) but does not include the amounts paid under Sections 6.3 in relation to safety measures and Section 6.4 in relation to the Footprints and the Wuskwatim Village Campsite;

“**SIL Claim**” means a claim for loss or damage caused by a **Wuskwatim Adverse Effect** advanced by a **Wuskwatim Claimant** who, at **Date of this Agreement**, or at the date the damage or loss arose:

- (a) was not ordinarily resident on the **Reserve**, but only if the damage or loss arose within the **SIL Trapline Zone**;
- (b) was ordinarily resident at or near the Community of South Indian Lake, regardless of where the damage or loss arose; or
- (c) is a member of the **OPCN**, regardless of where the damage or loss arose;

provided that, where the **Wuskwatim Claimant** is a corporation, an association or a group, it will not be considered to be ordinarily resident at or near the Community of South Indian Lake unless, at the date the damage or loss arose, the majority of its shareholders or members were so resident and the scope of the **SIL Claim** will be limited to the interest of the members of such group who were so resident;

“**SIL Trapline Zone**” means the area shown on Schedule 5.1 of the **1996 NFA Implementation Agreement**;

“**Taskinigahp Claims Account**” means the account funded and administered under Article 13 of the **Taskinigahp Trust Indenture** and administered in accordance with this **Agreement** and the **Taskinigahp Trust Indenture**;

“**Taskinigahp Corporate Trustee**” means the trust corporation which is the signatory to the **Taskinigahp Trust Indenture** and its successors in office and includes, where transitional obligations are being fulfilled and the context requires, both an outgoing and an incoming trustee;

“**Taskinigahp Trust**” or “**Trust**” means the trust settled by NCN which, among other things, will hold and administer the **Settlement Proceeds**;

“**Taskinigahp Trust Indenture**” means the agreement to be entered into among NCN, the **Taskinigahp Trustees** and Taskinigahp Power Corporation settling the **Taskinigahp Trust**, which shall be substantially in the form of the **Taskinigahp Trust Indenture** attached as Schedule 16-2 to the **PDA**;

“**Taskinigahp Trustees**” or “**Trustees**” means collectively the **NCN Trustees** and the **Taskinigahp Corporate Trustee**;

“**Wuskwatim Adverse Effects**” means the direct or indirect negative consequences of the **Wuskwatim Project** or the operation thereof by the **Limited Partnership**, and of the **Wuskwatim Project Related Transmission Facilities** or the operation thereof by **Hydro**, which consequences impact or change the physical, chemical or biological characteristics of the environment and include, without limitation, risks or injuries to the health, safety, well-being, comfort or enjoyment of **NCN** or **Members**, and impacts on interests in and the exercise of rights in relation to lands, pursuits, activities, opportunities, lifestyles and assets of **NCN** or **Members**;

“**Wuskwatim Claimant**” means any of:

- (a) Chief and Council;
- (b) **NCN**;
- (c) any person who is a **Member**;
- (d) any group, or unincorporated association, whose membership or shareholding is wholly or substantially comprised of **Members**;
- (e) any unincorporated association established by **Chief and Council**;
- (f) any share capital corporation, the shares of which are wholly or substantially owned, both legally and beneficially, and controlled by **NCN** or **Members**; or
- (g) any non - share capital corporation, the membership of which consists wholly or substantially of **NCN** or **Members**;

who or which suffered a loss or damage resulting from or attributable to a **Wuskwatim Adverse Effect**;

“**Wuskwatim Claims Officer**” means the person appointed by **Chief and Council** under Subsection 4.2.1 or, in that person's absence or incapacity, the alternate **Wuskwatim Claims Officer**;

“**Wuskwatim Generating Station**” means the proposed hydro-electric generating station forming part of the **Wuskwatim Project** and consisting of a complex of structures, including the powerhouse, spillway, dam, dyke and transition structures, used in the production of electricity;

“**Wuskwatim Project**” means the **Wuskwatim Generating Station** and all related works, excluding **Wuskwatim Project Related Transmission Facilities** including, without limitation, all channels, excavations, camps, storage areas, local roads and the Project Lands and the Access Road, to be located at Taskinigahp Falls near Wuskwatim Lake, all of which are more particularly described in Article VI of the **PDA** and which, if built, will contribute about 200 megawatts to the Integrated Power System through the **Wuskwatim Project Related Transmission Facilities**;

“**Wuskwatim Project Related Transmission Facilities**” means the proposed complex of transmission and communication related facilities to be constructed in connection with the **Wuskwatim Project**, including without limitation all transmission lines, switching and transformer stations and the construction power line; and

“**Wuskwatim Transmission Project**” means **Hydro's** proposed project to develop the **Wuskwatim Project Related Transmission Facilities** and all related works;

1.2.4 Purposes. These definitions are intended only for purposes of this **Agreement**, and may not be used for any other purposes. Except for use in this **Agreement**, these definitions are without prejudice to, and are not binding upon, any of the **Parties**.

## ARTICLE 2 - RELATIONSHIP TO PDA

### 2.1 RELATIONSHIP TO PDA

2.1.1 Conditional on PDA. Notwithstanding the execution of this **Agreement** by the **Parties** on the **Date of this Agreement**, the rights and obligations of the **Parties** hereunder shall be subject to and contingent upon the execution and delivery of the **PDA** by the respective parties thereto.

### 2.2 TERMINATION OF PDA

2.2.1 Settlement Proceeds on Termination. In the event that the **Limited Partnership** determines not to proceed or continue with construction of the **Wuskwatim**

**Project** and the **PDA** is terminated in accordance with the provisions of Section 2.8 of the **PDA**, then this **Agreement** shall terminate and any portion of the **Settlement Proceeds** that has not been paid under subsection 3.2.1 and Schedule 1.1 of this **Agreement**, shall no longer be payable by the **Limited Partnership** to the **Taskinigahp Trust** (on behalf of **NCN** pursuant to the **NCN Deed of Assignment**) and the Releases and Indemnities provided by **NCN** under Article 7 shall be limited to the **Wuskwatim Adverse Effects** arising or attributable to the actions taken and work undertaken to that date.

### ARTICLE 3 - SETTLEMENT PROCEEDS

#### 3.1 INTRODUCTION

3.1.1 Introduction. Article 3 addresses the payment of the **Settlement Proceeds** to address **Wuskwatim Adverse Effects** and compensation for trappers for financial loss.

#### 3.2 SETTLEMENT PROCEEDS

3.2.1 Payment of Settlement Proceeds. Following the **Date of this Agreement**, the **Settlement Proceeds** identified in Schedule 1.1 shall be paid to the **Taskinigahp Trust** (on behalf of **NCN** pursuant to the **NCN Deed of Assignment**) at the times provided for payment in Schedule 1.1.

3.2.2 Interest. From the **Date of the Agreement** interest shall accrue, on the amount of the **Settlement Proceeds** that under Schedule 1.1 remain unpaid, at the then current prime interest rate per annum as publicly announced from time to time by the Royal Bank of Canada at its main office in the City of Winnipeg, Manitoba as its preferred lending rate of interest charged to its most creditworthy Canadian customers, whether or not such interest rate is actually charged by said bank to any customer or the maximum rate permitted by law, whichever is less, calculated daily from the **Date of this Agreement** until the date upon which payment is due under Schedule 1.1.

3.2.3 Payment of Accrued Interest. Interest which has accrued on the unpaid **Settlement Proceeds** under Subsection 3.2.2 will be paid annually to the **Taskinigahp Trust** (on behalf of **NCN** pursuant to the **NCN Deed of Assignment**) within 30 days of the anniversary of the **Date of this Agreement**.

3.2.4 Interest on Late Payments. Late payments made after the dates set out for payment in Schedule 1.1 shall bear interest at the then current prime interest rate per annum as publicly announced from time to time by the Royal Bank of Canada at its main office in the City of Winnipeg, Manitoba as its preferred lending rate of interest charged



to its most creditworthy Canadian customers, whether or not such interest rate is actually charged by said bank to any customer plus 2% per annum, or the maximum rate permitted by law, whichever is less, calculated daily from the date due until the date upon which payment is made.

3.2.5 Restriction on Use. Except as provided in Subsection 6.4.12, no portion of the capital amount of the **Settlement Proceeds** held in the **Taskinigahp Trust** shall be available to be disbursed from the **Taskinigahp Trust** in accordance with the provisions of the **Taskinigahp Trust Indenture** until the earlier of:

- (a) the **Final Closing Date**; or
- (b) termination of the **PDA** under the provisions of Section 2.8 of the **PDA**.

3.2.6 Interest May Be Used. Interest accrued on the **Settlement Proceeds** from **Date of the Agreement** under Subsection 3.2.2 and paid to the **Taskinigahp Trust** under Subsection 3.2.3 on each anniversary of the **Date of this Agreement** shall be available at any time or times thereafter to be disbursed from the **Taskinigahp Trust** in accordance with the provisions of the **Taskinigahp Trust Indenture**.

### 3.3 TRAPPING

3.3.1 Adverse Effects on Trapping. **Hydro** shall make offers to fully compensate **Members** who ordinarily engage in trapping on a registered trapline, which the **Wuskwatim Project Related Transmission Facilities** cross, for trapping losses and incidental domestic losses which it is anticipated may be suffered or incurred by such **Members**, while engaged in trapping on such a trapline, as a consequence of **Wuskwatim Adverse Effects** arising from the development and operation of the **Wuskwatim Project Related Transmission Facilities**. **NCN** agrees that, if requested by **Hydro**, **NCN** will assist in identifying **Members** who engage in trapping on a registered trapline which the **Wuskwatim Project Related Transmission Facilities** cross.

3.3.2 Notice to NCN. Before making an offer under Subsection 3.3.1 of this **Agreement** to any **Member** who ordinarily engages in trapping on a registered trapline, which the **Wuskwatim Project Related Transmission Facilities** cross, **Hydro** shall notify **NCN** and advise the identified trapper that he or she may review the offer with **NCN**, or otherwise involve **NCN** in the negotiation of the compensation.

3.3.3 Availability of Claims Procedure and Arbitration. If a **Member** who ordinarily engages in trapping on a registered trapline, which the **Wuskwatim Project Related Transmission Facilities** cross, does not accept the offer of compensation made by

**Hydro** pursuant to Subsection 3.3.1, that **Member** may, in the event of suffering a trapping loss or incidental domestic loss contemplated in Subsection 3.3.1, utilize the claims procedure and arbitration available for **Members** outlined in Articles 4 and 5 of this **Agreement**. Compensation for trapping losses or incidental domestic losses described in Subsection 3.3.1 shall be the responsibility of **Hydro** and shall not be paid from the **Settlement Proceeds**.

## ARTICLE 4 - CLAIMS

### 4.1 ELIGIBLE CLAIMS

4.1.1 Introduction. This Article 4 specifies claims which may be advanced, and the procedure for advancing them against the **Taskinigahp Trust**. In this Article, all references to a **Wuskwatim Claims Officer** shall include an alternate **Wuskwatim Claims Officer** where applicable.

4.1.2 Eligible Claims. A claim may be advanced against the **Taskinigahp Trust** for compensation sufficient to compensate the **Wuskwatim Claimant** for loss or damages suffered by that **Wuskwatim Claimant** due to **Wuskwatim Adverse Effects**, but no claim may be advanced:

- (a) by a person who was not a **Member** at the time the **Wuskwatim Adverse Effect** occurred;
- (b) by an insurer by way of subrogation; or
- (c) which is an **SIL Claim**.

4.1.3 Limitation. A right to claim under Subsection 4.1.2 shall expire four (4) years from the date the loss or damage became evident to the **Wuskwatim Claimant**. No **Wuskwatim Claims Officer** and no **Arbitrator** has jurisdiction to extend this time limitation.

### 4.2 CLAIMS OFFICER

4.2.1 Appointment and Jurisdiction. **Chief and Council** may appoint in writing as its designate for investigating and deciding claims under Article 4:

- (a) a **Wuskwatim Claims Officer**, and one or more alternate **Wuskwatim Claims Officers** to serve in the absence or incapacity of the **Wuskwatim**

**Claims Officer**, to administer and decide claims of not more than \$6,000.00 (six thousand) dollars;

- (b) a claims panel consisting of the **Wuskwatim Claims Officer** and two (2) **NCN Trustees** to administer and decide claims in excess of \$6,000.00 (six thousand) dollars; and
- (c) such other appropriate claims panel competent to carry out the duties of administering and deciding claims hereunder.

Nothing herein shall preclude **Chief and Council** from appointing the same person appointed as Claims Officers under the **1996 NFA Implementation Agreement** to be the **Wuskwatim Claims Officer** under this **Agreement**.

4.2.2 Eligibility of **Wuskwatim Claims Officer**. A person is eligible to be a **Wuskwatim Claims Officer** if the person:

- (a) is a **Member**;
- (b) is not a **NCN Trustee**;
- (c) has not been convicted of an indictable offence or has been convicted of an indictable offence but a pardon has been granted for the conviction;
- (d) is not currently charged with an indictable offence; and
- (e) is not an undischarged bankrupt.

If at anytime a **Wuskwatim Claims Officer** ceases to meet all the eligibility criteria outlined in this Subsection 4.2.2, he or she shall be automatically suspended from any and all duties until such time as he or she is again eligible under this Subsection 4.2.2.

4.2.3 Eligibility of Claims Panel Member: A person, who is not a **Wuskwatim Claims Officer**, is eligible to be a member of a claims panel established under Subsection 4.2.1 if the person:

- (a) is a **Member**;

- (b) has not been convicted of an indictable offence or has been convicted of an indictable offence but a pardon has been granted for the conviction;
- (c) is not currently charged with an indictable offence; and
- (d) is not an undischarged bankrupt.

If at anytime a member of a claims panel ceases to meet all the eligibility criteria outlined in this Subsection 4.2.3, he or she shall be automatically suspended from any and all duties until such time as he or she is again eligible under this Subsection 4.2.3.

4.2.4 Tenure. The appointment of a **Wuskwatim Claims Officer** or a member of a claims panel, may be revoked in writing at any time at the sole discretion of **Chief and Council**, and shall be automatically revoked should such person cease at any time to meet the qualifications and requirements for eligibility. Where a claim is being considered at the time of revocation of appointment or resignation of the **Wuskwatim Claims Officer** or a member of a claims panel, the **Wuskwatim Claimant** shall be notified by **Chief and Council**, and the claim shall be decided by a new appointee.

4.2.5 Undertaking. Prior to assuming office, a **Wuskwatim Claims Officer**, or member of a claims panel including a member who is a **NCN Trustee**, shall execute an undertaking in a Schedule 4.5 form, and file that executed form with **Chief and Council**.

4.2.6 Chief and Council. If a **Wuskwatim Claims Officer** or a claims panel is not appointed, their functions under Article 4 shall be undertaken by **Chief and Council**, and the provisions of Article 4 shall be read accordingly.

4.2.7 Liability. The **Wuskwatim Claims Officer** and members of the claims panel shall be responsible for the fair, prudent and impartial administration of the claims procedures set out in Article 4 and, provided they act in good faith, they shall incur no liability arising out of their administration of such claims.

### 4.3 CLAIMS PROCEDURE

4.3.1 Form of Claims. Claims shall be filed with **Chief and Council** or directly with the **Wuskwatim Claims Officer**, and shall contain the information set out in Schedule 4.1. For greater certainty, a valid claim must be in writing.

4.3.2 Notice of Claim. Upon receipt of a claim, **Chief and Council**, or the **Wuskwatim Claims Officer** shall:

- (a) if appropriate, send a copy of the claim to the RCMP or other police force as may be appropriate;
- (b) post a copy of the claim and a completed notice under Schedule 4.2 in the Band Office or in some other public place on **Reserve** that is frequented by **Members**;
- (c) if received by **Chief and Council**, retain a copy and where applicable, forward the original to the **Wuskwatim Claims Officer** or members of the claims panel; and
- (d) if received directly by the **Wuskwatim Claims Officer**, forward a copy to **Chief and Council**.

4.3.3 Notice Period. Prior to a decision under Subsection 4.3.7, the notice under paragraph 4.3.2(b) shall be posted and available to public view for not less than:

- (a) three (3) business days for a claim of six thousand (\$6,000.00) dollars or less; and
- (b) ten (10) business days for a claim over six thousand (\$6,000.00) dollars.

4.3.4 Action on Claims. Upon receipt of the claim, the **Wuskwatim Claims Officer** or members of the claims panel shall investigate and decide the matter.

4.3.5 Conflict. No **Wuskwatim Claims Officer** or member of a claims panel who has an interest in a claim that could affect the impartiality of such person, may take part in any deliberations or decisions with respect to that claim. For greater certainty, a **Wuskwatim Claims Officer** or member of a claims panel who is a spouse, parent, child, sibling, grandparent, grandchild, or a resident of the same dwelling as the **Wuskwatim Claimant** shall be deemed to have such an interest in a claim. Depending on all relevant circumstances, other relationships may also represent such an interest in a claim. If one or more **NCN Trustees** has such an interest in a claim, one or more alternate **Wuskwatim Claims Officers** who have no such interest shall take the place of the **NCN Trustee(s)** in dealing with the claim.

4.3.6 Investigation. The **Wuskwatim Claims Officer** or members of the claims panel shall conduct, or cause to be conducted, such investigation as considered appropriate. If appropriate, they may retain agents to assist in the investigation.

4.3.7 Preliminary Decisions. Upon completion of the investigation carried out pursuant to Subsection 4.3.6, and after considering any comments from **Members**, the **Wuskwatim Claims Officer** or members of the claims panel shall decide if:

- (a) the applicant meets the criteria of a **Wuskwatim Claimant**;
- (b) the person advancing the claim was a **Member** at the time of the occurrence of the **Wuskwatim Adverse Effect**;
- (c) the claim is being brought by an insurer by way of subrogation;
- (d) the claim is an **SIL Claim**;
- (e) the claim, or a portion of the claim, must be advanced against the **Limited Partnership** or **Hydro** as a continuing liability under Subsection 7.4.1 and, if so, provide a copy of such decision and the claim to the **Limited Partnership** or **Hydro** as applicable; and
- (f) the claim has been brought within the time limit imposed under Subsection 4.1.3.

4.3.8 Limited Partnership Action. The **Limited Partnership** or **Hydro** may dispute the decision under paragraph 4.3.7(e) by referring it to arbitration under Section 5.4 or 5.5, as applicable, within, but not later than, thirty (30) days of its receipt of such decision.

4.3.9 Further Decision Process. If the claim is not one that must be advanced against the **Limited Partnership** or against **Hydro** as a continuing liability under Subsection 7.4.1; the applicant meets the criteria of a **Wuskwatim Claimant**; the application has been brought within the time specified; and it is determined under Subsection 4.3.7 that the claim meets the requirements of Subsection 4.1.2; the **Wuskwatim Claims Officer** or members of the claims panel shall:

- (a) decide if the claim should be paid;
- (b) assess the amount of compensation, taking into account any prior benefit received by, or compensation or insurance proceeds paid, or payable, to the **Wuskwatim Claimant** or any other benefit received by the **Wuskwatim Claimant** under this **Agreement**, or under any other agreement with a **Party**, or under the **NFA**;

- (c) deliver a decision in a Schedule 4.3 form to the **Wuskwatim Claimant** and any **Member** who provided comments; and
- (d) upon request, or if they determine it is appropriate, deliver the information set out in Schedule 4.3 orally, in a language spoken by the **Wuskwatim Claimant** and any **Member** who provided comments.

For greater certainty, claims shall be decided on the basis of “no double recovery”. Any amount recovered by a **Wuskwatim Claimant** through any policy of insurance shall be deducted from any amount awarded in respect of the claim.

4.3.10 Payment Following Decision. If compensation is awarded under Subsection 4.3.9 or 4.4.4, **Chief and Council** shall, upon its receipt of an acceptance and release in a Schedule 4.4 form duly signed by the **Wuskwatim Claimant**, promptly pay such compensation and any costs awarded with moneys advanced from the **Taskinigahp Claims Account**.

4.3.11 Rejection of Claim by Delay. Except where the preliminary decision under Subsection 4.3.7 is to refer the claim to the **Limited Partnership** or to **Hydro** as a continuing liability under Subsection 7.4.1, if a decision is not delivered within thirty (30) days of the date the claim is filed with **Chief and Council** or the **Wuskwatim Claims Officer**, that claim shall be deemed to be rejected, and the **Wuskwatim Claimant** may refer the claim to arbitration pursuant to Section 5.3 as provided in Section 4.4.

4.3.12 Reimbursement. Where it is determined that the **Limited Partnership** or **Hydro** has continuing liability under Subsection 7.4.1, then forthwith, upon receipt of an invoice and all relevant supporting material, the **Limited Partnership** or **Hydro**, as the case may be, will reimburse **NCN** for its reasonable expenses incurred in investigating and reaching a preliminary decision under Subsection 4.3.7 that the **Limited Partnership** or **Hydro** has continuing liability under Subsection 7.4.1.

4.3.13 Address Change. If the **Wuskwatim Claimant's** mailing address changes after the claim is filed, the onus shall be on the **Wuskwatim Claimant** to inform the **Wuskwatim Claims Officer** or claims panel, **Chief and Council** and, if applicable, the **Arbitrator**, of their new address. If they fail to do so while their claim is being investigated, and regular mail sent to their address by the **Wuskwatim Claims Officer** or claims panel is returned to sender, their claim shall be deemed to be abandoned. If they fail to do so during an arbitration process which they have initiated, and regular mail sent to their address by **Chief and Council** or the **Arbitrator** is returned to sender, their referral to arbitration shall be deemed to be abandoned.

#### 4.4 CLAIMS ARBITRATION

4.4.1 Referral to Arbitration. Where a **Wuskwatim Claimant** or **Chief and Council** disputes the decision under Section 4.3, other than a decision under paragraph 4.3.7(e), either may, within twenty-one (21) days of their receipt of the decision, refer that dispute to arbitration by serving upon the other a Referral to Arbitration in a Schedule 4.6 form. Upon receiving or serving a Referral to Arbitration, **Chief and Council** shall forthwith provide to the **Wuskwatim Claimant** the list of **Arbitrators** referred to in Subsection 5.3.1, and refer the matter to arbitration in accordance with Section 5.3.

4.4.2 Substantial Compliance. No claim shall be dismissed for failure on the part of the **Wuskwatim Claimant** to use a specified form or procedure, and no reports, notices or decisions contemplated in Schedules 4.1 to 4.6 inclusive, shall be invalid for failure to follow or be in the specified form, provided there has been substantial compliance and no prejudice results there from. For greater certainty, all claims and referrals to arbitration must be in writing in order to be valid.

4.4.3 Role of Chief and Council in Arbitration. **Chief and Council** may, on notice to the **Arbitrator** selected, appear as a party in any arbitration under Section 4.4.

4.4.4 Considerations of Arbitrator. The **Arbitrator** shall make the determinations required in Subsections 4.3.7 and 4.3.9 in the manner and within the times specified in Subsection 5.3.8. Failure to render a decision within the specified time may result in a loss of jurisdiction and the appointment of a new **Arbitrator** pursuant to Subsection 5.6.2. Where there is a dispute as to who is, or is not a **Member**, the **Arbitrator** shall resolve such dispute consistent with the Band Membership Code established by section 10 of the *Indian Act* (Canada) which has been in force and effect since May 24, 1988, or any successor code established by or pursuant to legislation.

4.4.5 Arbitrator's Decision. The **Arbitrator** shall forward the decision to the **Wuskwatim Claimant**, **Chief and Council**, the **Wuskwatim Claims Officer** and any **Member** who appeared and made representations to the **Arbitrator**.

4.4.6 Decisions Available for Public Viewing. All decisions concerning claims for compensation from the **Taskinigahp Claims Account** shall be made available by **Chief and Council**, for review by **Members** during normal business hours.

4.4.7 Amendment of Forms. Provided any such amendment is not prejudicial to the other **Parties** and is consistent with this **Agreement**, the forms appended as Schedules 4.1 to 4.6, both inclusive, may be amended by **Chief and Council**.



#### 4.5 RELATION TO 1996 NFA IMPLEMENTATION AGREEMENT

4.5.1 **1996 NFA Implementation Agreement.** In the event that the facts giving rise to a claim or arbitration could be the grounds for a claim or arbitration both under the **1996 NFA Implementation Agreement** and under this **Agreement, Chief and Council** shall process the claim or arbitration under this **Agreement**, but the determination of liability for paying such claim shall be made in accordance with Subsection 7.4.7. If a person already filed a claim under Article 12 of the **1996 NFA Implementation Agreement**, and a final determination was reached in respect of that claim, and the same person then files a claim or arbitration under this **Agreement** based upon the same facts, the **Wuskwatim Claims Officer** or claims panel shall deny the claim, and the person shall have no recourse to arbitration under this **Agreement** in respect of said second or additional claim.

### ARTICLE 5 - ARBITRATION

#### 5.1 INTRODUCTION

5.1.1 **Introduction.** Article 5 establishes procedures for arbitrating disputes under this **Agreement**, in relation to:

- (a) matters involving **NCN, Chief and Council, and Wuskwatim Claimants**, which matters shall proceed as prescribed under Section 5.3;
- (b) matters involving the **Parties**, which matters shall proceed as prescribed under Section 5.4; and
- (c) matters involving the potential continuing liability of the **Limited Partnership** or of **Hydro** under Subsection 7.4.1, and in which a **Wuskwatim Claimant** other than **NCN** is involved, which matters shall proceed as prescribed under Section 5.5.

#### 5.2 ARBITRATION

5.2.1 **NCN Disputes.** Any decision referred to arbitration under Subsection 4.4.1 which involves only **Members, NCN, Chief and Council, and/or Wuskwatim Claimants**, may be referred to arbitration in accordance with Section 5.3.

5.2.2 **Arbitration Act Applies.** The *Arbitration Act* (Manitoba) shall govern any arbitration under this **NCN Adverse Effects Agreement**, except where that Act conflicts

with any express term of this **NCN Adverse Effects Agreement**, in which case the provisions of this **NCN Adverse Effects Agreement** shall prevail.

5.2.3 Reference to Courts. Any constitutional issue arising out of, or in respect to, this **NCN Adverse Effects Agreement**, or the matters implemented or settled by this **NCN Adverse Effects Agreement**, shall be referred to court, and not arbitration under Article 5.

5.2.4 No Substantive Rights. Nothing in Article 5 grants any substantive rights to any person, except the right to refer and have matters arbitrated under Article 5.

### 5.3 NCN ARBITRATION

5.3.1 List of Arbitrators. After consultation with persons it considers advisable, **Chief and Council** shall establish and maintain an up-dated list of not more than ten (10), or fewer than five (5), persons who have the qualities and experience suitable to be an **Arbitrator** appointed in relation to any matter under Section 5.3, and who are willing to so act. **Chief and Council** shall make the list available to any person referring a matter to arbitration under Section 5.3 and, on request, to any person to whom the provisions of Section 5.3 apply.

5.3.2 Referral to Arbitration. Disputes may be referred to arbitration under Section 5.3 by a **Wuskwatim Claimant**, or by **Chief and Council**, by serving a referral to arbitration pursuant to Subsection 4.4.1.

5.3.3 Notification. **Chief and Council** shall, upon receipt of a referral under Subsection 5.3.2, forthwith:

- (a) provide a copy to the **Wuskwatim Claims Officer** and the **Taskinigahp Trustees**; and
- (b) provide a list of potential **Arbitrators** to the **Wuskwatim Claimant**.

5.3.4 Appointment of Arbitrator. Subject to approval of any named respondent, a person referring a matter to arbitration under Section 5.3 may select the **Arbitrator** from the current list of **Arbitrators**. A respondent who objects to an appointment must do so in writing delivered to the **Chief and Council** within fourteen (14) days of receipt of the notice of referral to arbitration. No person shall accept appointment or act as the **Arbitrator** in relation to any matter being arbitrated in which such person has a personal, pecuniary or other conflict of interest, which could affect their impartiality with respect to the matter. If none of the persons named on the list of **Arbitrators** is acceptable or able

to act, and the person referring the matter, **Chief and Council** and any respondent are unable otherwise to agree upon an acceptable **Arbitrator**, any one of them may request that the **Arbitrator** be appointed by the Chief Justice or Associate Chief Justice of the Court of Queen's Bench of Manitoba by application served on each of the other parties to the arbitration.

5.3.5 Jurisdiction and Powers. From the date of acceptance of the appointment, the **Arbitrator** shall have jurisdiction over the conduct of the proceedings, and may make such orders as are necessary to ensure that the dispute is dealt with fairly and expeditiously, with regard to the real substance of the matter in dispute. The **Arbitrator** shall have power to:

- (a) resolve any dispute as to facts;
- (b) decide whether any **Wuskwatim Claimant** is entitled to receive compensation pursuant to this **Agreement**;
- (c) award compensation, which will place the **Wuskwatim Claimant** in no worse position than the **Wuskwatim Claimant** would have been in, in the absence of the **Wuskwatim Adverse Effect**;
- (d) interpret this **Agreement**;
- (e) declare the rights and obligations of **NCN, Chief and Council**, or a **Wuskwatim Claimant** in relation to each other under this **Agreement**;
- (f) award compensation from the **Taskinigahp Claims Account**;
- (g) award interest from the **Taskinigahp Claims Account**; and
- (h) subject to Subsections 5.3.6, 5.3.14 and 5.3.15, award costs, including costs from the **Taskinigahp Claims Account**.

For greater certainty, the **Arbitrator** shall not award punitive or exemplary damages.

5.3.6 Costs. Any award of costs under paragraph 5.3.5(h) may include reasonable fees, travelling allowances and other ancillary expenses for lawyers, consultants, experts or other witnesses participating in such arbitration, as well as the reasonable fees of the **Arbitrator** under Subsection 5.3.14. For greater certainty, an award of costs shall be

contractually binding upon **NCN** and/or a **Wuskwatim Claimant**. By referring a matter to arbitration, a **Wuskwatim Claimant** is deemed to enter into a contract with **NCN**. As a term of that contract, the **Wuskwatim Claimant** agrees to be bound by any order or award, including an order or award of costs, that may be made against them.

5.3.7 Application to Vary and Finality. Any person referring a matter to arbitration under Section 5.3 may apply in writing to the **Arbitrator**, within fourteen (14) days after the receipt of the decision, to amend or vary it in respect of anything that was raised before the **Arbitrator**, or in the application or interpretation of such decision. The party so applying shall copy said application to all other parties. All other parties shall have an opportunity to reply in writing, with copies to all other parties, within seven (7) days. The **Arbitrator** shall provide a written decision in respect of this application which may, at the **Arbitrator's** sole discretion, include reasons for the decision. Thereafter, the **Arbitrator** shall have no jurisdiction with respect to the matter that was the subject of the arbitration.

5.3.8 Expedited Arbitrations. The **Arbitrator** shall fix the date on which the matter will be considered, which shall fall within twenty-eight (28) days of the date the appointment is accepted. A decision, in written form, shall be delivered within twenty-eight (28) days of the receipt of all evidence and final argument. Where requested to do so by all parties to the arbitration, the **Arbitrator** shall issue an oral decision within one (1) day after conclusion of the hearing with written reasons to follow within the twenty-eight (28) day period. The parties to any arbitration may extend any of these deadlines, by mutual written consent. Written arbitration decisions shall be public documents, and may be circulated by the parties to the arbitration as they see fit.

5.3.9 Practice and Procedure. Subject to this **Agreement** and the rules of natural justice, the **Arbitrator** shall establish the practice and procedure for conducting the arbitration. The **Arbitrator** shall determine the matter based on a hearing, unless all of the **Parties** to the arbitration under Section 5.3 request a determination on documentary evidence and written referrals only, in which case the **Arbitrator** may direct a hearing or proceed as requested. For greater certainty, the **Arbitrator** may grant adjournments on fair and reasonable terms. For greater certainty, the **Arbitrator** may decide to hold a preliminary hearing on the question of liability followed, if necessary, by a further hearing on the question of quantum of damages.

5.3.10 Representation by Counsel. Any person involved in an arbitration under Section 5.3 may be represented by counsel, and the **Arbitrator** may order that payment for counsel of the **Wuskwatim Claimant's** choice be made from the **Taskinigahp Claims Account**. For greater certainty, the **Arbitrator** shall have the option of ordering payment for counsel on the basis of the relevant tariff to the Court of Queen's Bench Rules

(Manitoba), as amended from time to time, or payment on some other fair and reasonable basis.

5.3.11 Evidence. Evidence may be presented in writing or orally. The **Arbitrator** shall not be bound by the strict rules of evidence, and may accept hearsay and any other evidence considered relevant.

5.3.12 Transcripts. If a hearing is held, the **Arbitrator** shall maintain a record of the proceedings. A party may request that the proceedings be transcribed, in which case a transcript shall be provided upon such terms as the **Arbitrator** may impose, including, without limitation, the costs thereof.

5.3.13 Hearing Location. Any hearing shall be held on the **Reserve**, unless the parties to the dispute consent to it being held elsewhere in Manitoba.

5.3.14 Arbitrator's Fees. The **Arbitrator** shall be paid a reasonable fee and expenses from the **Taskinigahp Claims Account**, unless the **Arbitrator** orders a party to the arbitration to pay all or part of same. Any reasonable fees of the **Arbitrator** not paid by a party are to be paid from the **Taskinigahp Claims Account**.

5.3.15 Interim Orders. The **Arbitrator** shall have the right to make interim orders, including orders for full or partial compensation and costs, prior to the final determination of any dispute. For greater certainty, there is no presumption that a **Wuskwatim Claimant** is entitled to one or more interim orders.

5.3.16 Relationship Between Mitigatory Measures and Wuskwatim Claimant Compensation. The **Parties** recognize that mitigatory or remedial measures are more likely to have a lasting, beneficial effect on the viability of a community or on individual residents, than monetary compensation. Accordingly, any evidence that such measures which have been implemented on a group or community basis in relation to the matters claimed, and their mitigatory effect when they have been implemented, shall be considered by the **Arbitrator**, in assessing the quantum of compensation to which any **Wuskwatim Claimant** shall be entitled from the **Taskinigahp Claims Account**.

5.3.17 Liability to Compensate. When a matter has been referred to arbitration pursuant to Article 4, the **Arbitrator** shall deal with the matter on the basis that the liability to compensate shall be solely and exclusively funded from the **Taskinigahp Claims Account**.

## 5.4 PARTIES ARBITRATION

5.4.1 **Parties Arbitration.** All disputes and claims which arise between the **Parties** under this **Agreement** relating to the application, interpretation, meaning, alleged violation, performance or non-performance of this **Agreement** shall be settled by final and binding arbitration pursuant to the provisions of this Section 5.4, unless the dispute involves the **Taskinigahp Trust**, in which case, notwithstanding that Article 22 of the **Taskinigahp Trust Indenture** provides that there shall be no arbitration under the **Taskinigahp Trust Indenture** involving **Hydro** or the **Limited Partnership** or the **General Partner**, such dispute shall be dealt with pursuant to Article 22 of the **Taskinigahp Trust Indenture** with such changes as the context requires and **Hydro** or the **Limited Partnership** may be parties to the arbitration.

5.4.2 **Reasonable Effort to Resolve.** The **Parties** agree that prior to bringing any dispute, difference or claim to arbitration pursuant to the provisions of this Section 5.4, they shall use reasonable efforts to resolve such dispute, difference or claim amongst themselves.

5.4.3 **Arbitration.** A party (an "**Applicant**") who wants to settle a dispute, difference or claim or apprehended dispute, difference or claim referred to in section 5.4.1 (a "**Dispute**") shall provide the party or parties against whom the **Dispute** is brought, a written notice (a "**Dispute Notice**") which shall contain the following:

- (a) the name of the respondent or respondents;
- (b) the name of the agreement under which the **Dispute** is brought;
- (c) a detailed description of the **Dispute**; and
- (d) 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 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**.

5.4.4 **Reply.** Each 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**.

5.4.5 Referral to Chief Executive Officer. Within 30 days of the **Applicant's** receipt of the **Reply**, if the **Dispute** has not been settled, the **Applicant** and each **Respondent** shall provide the **Dispute Notice and Reply** to its chief executive officer, or person having like authority. The chief executive officers or persons appointed by them respectively to act on their respective behalf's with authority to settle the **Dispute**, shall meet and in good faith attempt to settle the **Dispute**. If no settlement is achieved within 30 days of the referral of the **Dispute** to the chief executive officers, the **Dispute** shall be referred to binding arbitration pursuant to the provisions of *The Arbitration Act* (Manitoba) and the following sections of this Section 5.4, 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.

5.4.6 Appointment of Arbitrator. Subject to section 5.4.7, an **Arbitrator** shall be appointed to adjudicate the dispute, using the following procedure:

- (a) the **Applicant** shall provide to each **Respondent** and each **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**;
- (b) if any one of the persons on the list of proposed arbitrators is acceptable to the **Applicant** and each **Respondent** and is willing and able to act as the **Arbitrator**, then that person shall be appointed as the **Arbitrator** forthwith; and
- (c) if within 45 days of the referral of the **Dispute** to the chief executive officers the **Applicant** and each **Respondent** cannot agree upon a person to act as **Arbitrator**, any 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 each of the other parties to the arbitration.

5.4.7 Qualifications of Arbitrator. An **Arbitrator** appointed pursuant to Section 5.4.6 shall:

- (a) be qualified to pass upon the particular matter in dispute;
- (b) not have a pecuniary interest in the particular matter in dispute; and
- (c) not have, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to Section 5.4.5, acted or been a

member of any firm which acted as solicitor, counsel or agent for any of the **Parties**.

5.4.8 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.

5.4.9 Place of Hearing. The arbitration shall take place in Winnipeg, Manitoba at such location, place and time as the parties 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.

5.4.10 Powers of the Arbitrator. Consistent with the provisions of this **Agreement**, and within any limits on the scope of the **Arbitrator's** jurisdiction contained in this **Agreement**, 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 legal and equitable relief and to award costs (including legal fees and the costs of the arbitration) and interest. Except as the parties to an arbitration otherwise expressly agree, the **Arbitrator** shall not have the authority or jurisdiction to change, alter, or amend this **Agreement**.

5.4.11 Counsel. Any party involved in an arbitration may be represented by counsel.

5.4.12 Evidence. Evidence submitted in an arbitration may be presented in writing or orally. The parties to an arbitration 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 any party, 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.

5.4.13 Arbitrator's Award. The **Arbitrator** shall deliver the award within 90 days following the completion of the hearing.

5.4.14 Award Final. The decision of the **Arbitrator** shall be final and binding on all of the parties to the arbitration. The right of any affected party 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).



5.4.15 Costs of the Arbitration. Each party to an arbitration 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.

5.4.16 Performance of Obligations. Each party to an arbitration agrees to continue performing its obligations under this **Agreement** while any **Dispute** is being resolved or arbitrated, subject to any interim order to the contrary issued by the **Arbitrator**.

5.4.17 Confidentiality. All hearings before the **Arbitrator** shall be public hearings. The Arbitrator may hold the hearing or a portion thereof in private if sensitive financial or other like information is to be disclosed and the legitimate interest in avoiding disclosure of that information outweighs the principle that hearings be open to the public.

5.4.18 Arbitrator's Undertaking. Upon appointment, every **Arbitrator** shall swear or affirm an undertaking in the form set forth in Schedule 5.1.

5.4.19 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 that arbitration, 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**.

5.4.20 Days. The word "days" wherever used in this Section 5.4 shall mean calendar days.

## 5.5 DISPUTES UNDER SUBSECTION 7.4.1

5.5.1 Disputes with NCN Alone. If, in the absence of a claim by a **Member** under Article 4, a dispute arises as to the continuing liability of the **Limited Partnership** or of **Hydro** under Subsection 7.4.1, that dispute shall be resolved pursuant to the dispute resolution provisions of Section 5.4.

5.5.2 Disputes Involving Claims by Members. If, pursuant to Subsection 4.3.8 involving a claim by a **Member**, either the **Limited Partnership** or **Hydro** disputes a preliminary decision under paragraph 4.3.7(e), that dispute, and the determination of the merits of the claim advanced by the **Member**, shall be resolved pursuant to Section 5.5.

5.5.3 Appointment of Arbitrator. An **Arbitrator** agreed upon by the parties to a dispute, including the **Member**, shall be appointed to adjudicate the dispute, using the following procedure:

- (a) **NCN** shall refer the names, addresses and occupations of not more than three (3) individuals, any one of whom may be selected by the participants to act as **Arbitrator**;
- (b) each party identified as a respondent or which has indicated it will participate in the arbitration shall, within twenty-one (21) days of the receipt of the list of proposed **Arbitrators**:
  - (i) select one (1) or more of the persons named on the list, or
  - (ii) reject all of the persons named on the list and so advise the other parties in writing.

If a party identified as a respondent, or which has requested to participate, does not respond to the list of proposed **Arbitrators** within the twenty-one (21) days, it shall be deemed to have accepted any selection made by the other parties involved in the dispute; and

- (c) if any one (1) of the persons on the list of proposed **Arbitrators** is acceptable to all parties and is willing and able to act as the **Arbitrator**, then that person shall be appointed as the **Arbitrator** forthwith. If more than one (1) person is unanimously selected, the **Arbitrator** shall be chosen from those persons by the party referring the issue to arbitration within seven (7) days of receiving the responses referred to in paragraph 5.5.3(b), and the person chosen, if willing and able to act, shall be appointed the **Arbitrator** forthwith.

5.5.4 Application to Judge. If the parties involved in the dispute cannot agree upon a person to act as **Arbitrator**, any party to the dispute may request that the **Arbitrator** be appointed by a Judge of the Court of Queen's Bench of Manitoba by applying within fourteen (14) days of the expiration of the time set out in paragraph 5.5.3(b).

5.5.5 Arbitration Process. The preliminary issue of the continuing liability of the **Limited Partnership** or of **Hydro** under Subsection 7.4.1 in relation to the claim or part of the claim shall be decided by the **Arbitrator** as if it were a dispute between the **Parties** under Section 5.4.

5.5.6 Arbitrator's Decision. If the **Arbitrator** or, if the decision of the **Arbitrator** is appealed, the Court of Appeal, determines that the **Limited Partnership** or **Hydro**, as the case may be, has continuing liability under Subsection 7.4.1 in relation to any part of the claim, and (i) if the applicant meets the criteria of a **Wuskwatim Claimant**; (ii) the

application has been brought within the time specified; and (iii) it is determined under Subsection 4.3.7 that the claim meets the requirements of Subsection 4.1.2, the **Arbitrator** shall:

- (a) resolve any dispute as to the facts;
- (b) decide if the claim should be paid;
- (c) assess the amount of compensation, taking into account any prior benefit received by, or compensation or insurance proceeds paid, or payable, to the **Wuskwatim Claimant** or any other benefit received by the **Wuskwatim Claimant** under this **Agreement**, or under any other agreement with a **Party**, or under the **NFA**;
- (d) consider the issue of costs;

and make an award accordingly. For greater certainty the **Arbitrator** shall not award punitive or exemplary damages and shall have no authority under Section 5.5 to make any award against the **Taskinigahp Trust** .

5.5.7 Costs. Any award of costs under subsection 5.5.6 may include reasonable fees, travelling allowances and other ancillary expenses for lawyers, consultants, experts or other witnesses participating in such arbitration, as well as the reasonable fees of the **Arbitrator**. For greater certainty, by referring a matter to arbitration, **Wuskwatim Claimants** are deemed to have entered enter into a contract with the other parties to the arbitration agreeing to be bound by any order or award, including and order or award of costs, that may be made against them.

5.5.8 Payment Following Decision. Subject to a final determination of any appeal under Subsection 5.6.1, if compensation is awarded under Subsection 5.5.6, the **Limited Partnership** or **Hydro**, as the case may be shall promptly pay such compensation and any costs awarded.

5.5.9 Referral Back. If the **Arbitrator** or, if the decision of the **Arbitrator** is appealed, the Court of Appeal, determines that the **Limited Partnership** or **Hydro**, as the case may be, has no continuing liability under Subsection 7.4.1 in relation to any part of the claim, then the claim shall be referred back for determination under Subsection 4.3.9.

## 5.6 REVIEW AND APPEAL OF DECISIONS

5.6.1 Finality of Decision. Subject to Subsection 5.3.7, the decision of the **Arbitrator** under Sections 5.3 or 5.5 shall be final and binding on all of the parties to the dispute, subject to the right to appeal on a point of law or jurisdiction, within thirty (30) days of the appealing party's receipt of the **Arbitrator's** decision, to the Court of Appeal for Manitoba. Following delivery of an award, the **Arbitrator** shall be *functus officio* on the issue decided, which issue shall be *res judicata* between the parties to the arbitration. By agreement, confirmed in writing by all parties to the arbitration, the **Arbitrator** may retain jurisdiction to resolve outstanding issues arising from the matter in dispute.

5.6.2 Remedy for Late Decisions. Where an **Arbitrator** fails to issue the decision within the time prescribed in sections 5.3, any party to such arbitration may proceed to have a new **Arbitrator** appointed, in the same manner as the original **Arbitrator** was appointed. Upon appointment of the new **Arbitrator**, the original **Arbitrator** shall lose jurisdiction, and the new **Arbitrator** shall resume the arbitration as the **Arbitrator**.

5.6.3 Valid Decision. Notwithstanding Subsection 5.6.2, until a new **Arbitrator** is appointed, the jurisdiction of the **Arbitrator** is not affected. If the **Arbitrator** renders the decision prior to the appointment of the new **Arbitrator**, that decision is valid and binding, and the process to choose the new **Arbitrator** shall cease.

## 5.7 GENERAL PROVISIONS

5.7.1 Applicability. The provisions of Section 5.7 are applicable to arbitrations under Sections 5.3 and 5.5.

5.7.2 Undertaking. Upon appointment, every **Arbitrator** shall swear or affirm an undertaking in a Schedule 5.1 form.

5.7.3 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 that arbitration, 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**.

5.7.4 Amendments. Upon notice to all **Parties**, a referral may be amended at any time prior to the conclusion of the arbitration, on such terms as the **Arbitrator** considers just.

5.7.5 Public Hearings. If the **Arbitrator** decides to hold a hearing, it shall be open to the public. The **Arbitrator** may hold the hearing or a portion thereof in private if

sensitive financial or other like information is to be disclosed, and the legitimate interest in avoiding disclosure of that information outweighs the principle that hearings be open to the public.

5.7.6 No Amendment. Except as otherwise expressly provided, the **Arbitrator** shall not have the authority or jurisdiction to change, alter, or amend this **Agreement** or any term or provision contained therein.

5.7.7 Relief. The **Arbitrator** may relieve, on just and equitable terms, against breaches of time limits or procedural requirements set out in this **Agreement**, provided no prejudice results therefrom. For greater certainty, the **Arbitrator** may not relieve against a breach of the time limit set out in Subsection 4.1.3.

5.7.8 Disqualification. No person who has a personal or pecuniary interest in a matter referred to arbitration, or is otherwise in a conflict of interest which could affect that person's impartiality with respect to such matter, shall act, or continue to act, as **Arbitrator** in relation to that matter.

## ARTICLE 6 - SCOPE OF SETTLEMENT

### 6.1 COMPENSATED ZONE

6.1.1 The Compensated Zone for Wuskwatim Adverse Effects. Subject to the exceptions contained in Subsection 7.4.1, the **Settlement Proceeds** fully compensate **NCN** and **Members** for all **Wuskwatim Adverse Effects** arising directly and indirectly from the development and operation of the **Wuskwatim Project** and the **Wuskwatim Project Related Transmission Facilities** to the extent that:

- (a) the **Wuskwatim Project** and the **Wuskwatim Transmission Project** are operated in accordance with their respective **Closing Licenses**; and
- (b) the **Wuskwatim Project** is operated in accordance with the **Fundamental Operating Features**.

6.1.2 Changes to a Closing License or to a Fundamental Feature. Notwithstanding the payment of the **Settlement Proceeds** or the releases and indemnities provided under Sections 7.2 and 7.3 of this **Agreement** if:

- (a) any material change to any **Closing License** in respect of the **Wuskwatim Project** is made or proposed to be made pursuant to section 2.16 of the

**PDA** or any material change to any **Closing License** in respect of the **Wuskwatim Transmission Project** is made or proposed to be made; or

- (b) any material change to a **Fundamental Feature** is made or proposed to be made, with the consent of **NCN** pursuant to section 6.2 of the **PDA**;

**NCN** and the **Limited Partnership**, in relation to the **Wuskwatim Project**, and **NCN** and **Hydro**, in relation to the **Wuskwatim Generation Project**, shall consider the potential for additional or incremental **Wuskwatim Adverse Effects** consequent upon such changes and endeavour to agree on compensation for such incremental or additional **Wuskwatim Adverse Effects**, if any, and in so doing shall follow the process set out in section 6.2, with such changes as the context requires.

6.1.3 Liability and Compensation for Breaches of a Closing Licences. If any **Regulatory Authority** determines that there has been a breach of a **Closing Licence** in respect of the **Wuskwatim Project** or the **Wuskwatim Transmission Project**, the **Parties** shall consider the potential for additional or incremental **Wuskwatim Adverse Effects** consequent upon such breach and endeavour to agree on compensation for any such additional or incremental **Wuskwatim Adverse Effects**, if any.

6.1.4 Arbitration. If no agreement among the relevant parties can be reached and a dispute exists under Subsections 6.1.2 or 6.1.3, then the relevant parties shall use the arbitration provision set forth in Section 5.4 of this **Agreement**, with necessary modifications, to resolve such dispute.

6.1.5 No Double Compensation. If, as a consequence of the breach of a **Closing License**, a **Regulatory Authority** or other governmental body with jurisdiction orders that the **Limited Partnership** or **Hydro** pay compensation to **NCN** or **Members** for **Wuskwatim Adverse Effects** resulting from such breach, the amount of such compensation shall be deducted from the amount of any compensation agreed to under Subsections 6.1.2 or 6.1.3, or from any award of the **Arbitrator** pursuant to subsection 6.1.4. Further, for greater certainty, there shall be no double compensation for a change to or a breach of a **Closing License** that also constitutes a change to or a breach of a **Fundamental Feature**.

## **6.2 PROCESS TO ADDRESS A MATERIAL BREACH OF A FUNDAMENTAL OPERATING FEATURE.**

6.2.1 Breach or Anticipated Breach. Where a breach of a **Fundamental Operating Feature** occurs, or where **NCN** and the **Limited Partnership** reasonably anticipate the occurrence of a breach of a **Fundamental Operating Feature** either **NCN** or the

**Limited Partnership** may give notice to the other to initiate the process set out in Subsection 6.2.2.

6.2.2 Process. If it is agreed by NCN and the **Limited Partnership** that a breach of a **Fundamental Operating Feature** has occurred or is reasonably anticipated to occur and that such breach is likely to be continuing, or if such a determination is made by the **Arbitrator**, NCN and the **Limited Partnership** shall:

- (a) identify and review any positive and negative effects on NCN and **Members** which have resulted, or which it is anticipated would result, from the continuing breach of the **Fundamental Operating Feature** including, without limitation, any opportunities for on-the-job training, employment or business for NCN or **Members**;
- (b) undertake such studies and investigations as are necessary to obtain a reasonable assessment and understanding of such potential effects which have been identified arising or likely to arise from such continuing breach of a **Fundamental Operating Feature**;
- (c) consider methods which could eliminate or alleviate any identified **Wuskwatim Adverse Effects** of the **Wuskwatim Project** arising or likely to arise from such continuing breach of a **Fundamental Operating Feature**;
- (d) identify, design and cost any mitigation and remedial works which are reasonable to eliminate or alleviate any **Wuskwatim Adverse Effects** of the **Wuskwatim Project** arising or likely to arise from such continuing breach of a **Fundamental Operating Feature**; and
- (e) determine appropriate compensation for any **Wuskwatim Adverse Effects** arising or likely to arise from such continuing breach of a **Fundamental Operating Feature** which cannot reasonably be eliminated or alleviated.

6.2.3 Joint Studies. Whenever a study or investigation of an issue is required to conclude the process outlined in Subsection 6.2.2, NCN and the **Limited Partnership** agree that, if reasonable, such study or investigation, including the establishment of the terms of reference for same, shall be undertaken by them jointly. Reasonable efforts shall be made to employ **Members** in such studies or investigations.

6.2.4 Budget. The **Limited Partnership** and **NCN** shall jointly prepare a budget for the reasonable costs of **NCN** to review and investigate information provided or required under Subsection 6.2.2. The **Limited Partnership** agrees to pay such reasonable costs provided that:

- (a) the actual invoice reflects the budget or a revised budget; and
- (b) the work done accords with the work outlined in the budget or revised budget.

6.2.5 Arbitrator's Remedial Authority. If a dispute arises between **NCN** and the **Limited Partnership** under Subsections 6.2.3 or 6.2.4, the **Arbitrator** appointed under Section 5.4 shall have the authority to resolve such dispute.

6.2.6 Onus. In any arbitration arising out of Section 6.2 the onus shall be on the **Party** alleging that:

- (a) a continuing breach of a **Fundamental Operating Feature** has occurred; and
- (b) the compensation provided under this **Agreement** should be increased to properly compensate for the additional effects arising from the continuing breach of a **Fundamental Operating Feature**.

6.2.7 Reasonableness of Settlement Proceeds. The reasonableness of the **Settlement Proceeds** in relation to the **Wuskwatim Adverse Effects** paid under this **Agreement** shall not be open to dispute.

### 6.3 SAFETY MEASURES

6.3.1 Safety Measures. **NCN** and the **Limited Partnership** have identified a number of safety measures set forth in Subsection 6.3.2 of this **Agreement**, which, subject to any required regulatory approvals, will be implemented by the **Limited Partnership** in consultation with **NCN**, at the expense of the **Limited Partnership**. For greater certainty, no payment shall come from the **Settlement Proceeds** for the identified safety measures.

6.3.2 List of Safety Measures. The safety measures identified by the **Limited Partnership** and **NCN**, referenced in Subsection 6.3.1 of this **Agreement**, include the provision of floating docks, trails, shelters, warning signs, and marker buoys all of which



are more specifically described in and located on maps appended to Schedules 6.1 and 6.2 to this **Agreement**.

6.3.3 Procedure. If, taking into consideration changes in technology and any other relevant factors, **NCN** or the **Limited Partnership** concludes that upgrading of, or additional, safety measures of the kind set out in Subsection 6.3.2 and Schedules 6.1 and 6.2, may be reasonably required to address safety concerns in the area shown on Schedules 6.1 and 6.2 arising out of, or attributable to the operation of the **Wuskwatim Project**, **NCN** or the **Limited Partnership** shall promptly notify the other. Thereafter, **NCN** and the **Limited Partnership** shall attempt to reach written agreement about such safety measures and reasonable funding arrangements for same.

6.3.4 Employment Opportunities. The **Limited Partnership** shall make reasonable efforts to train and employ **Members** to carry out the work referred to in Subsection 6.3.2 and work that may arise pursuant to Subsection 6.3.3.

6.3.5 Changes. If, taking into consideration changes in technology or any other relevant factors, **NCN** or the **Limited Partnership** concludes that any safety measure in place pursuant to this **Agreement** is no longer required to address safety concerns arising out of, or attributable to, the operation of the **Wuskwatim Project**, **NCN** or the **Limited Partnership** may give not less than one (1) year's notice to the other that it wishes to review the safety measures, or funding arrangements for safety measures, in place pursuant to this **Agreement**. Following such notice, **NCN** and the **Limited Partnership** shall attempt to reach written agreement about which, if any, safety measures may be discontinued on the basis that they are no longer required to address safety concerns arising out of, or attributable to, the operation of the **Wuskwatim Project**.

6.3.6 Arbitration of Safety Measures. Disputes between **NCN** and the **Limited Partnership** regarding the appropriate safety measures may be arbitrated under the dispute resolution mechanisms in Section 5.4.

6.3.7 Relationship to 1996 NFA Implementation Agreement. This **Agreement** does not alter, vary, or prejudice the rights of **NCN** or **Hydro** under Section 2.7 of the **1996 NFA Implementation Agreement**. The **Parties** agree that they shall examine safety measures under the **1996 NFA Implementation Agreement** in considering and creating safety measure under Section 6.3 of this **Agreement** to avoid needless duplication of efforts or measures.

## 6.4 SOCIO-CULTURAL AND SPIRITUAL ISSUES

6.4.1 Issues Addressed. In the negotiation of this **Agreement**, socio-cultural and spiritual issues were identified by **NCN** and **Members** to be of fundamental importance. Many of these issues are best addressed by **NCN** and **Members** through their use of the **Settlement Proceeds** to fund ceremonies, language programs and other initiatives designed to protect, restore and enhance their Cree culture and language. Accordingly the **Settlement Proceeds** are available to **NCN** and **Members** for such purposes, and subject to the issues of adaptive management referenced under Subsection 6.4.2 and the additional provisions related to the Footprints and the Wuskwatim Village Campsite referenced under Subsections 6.4.3 to 6.4.14 of this **Agreement**, fully address all **Wuskwatim Adverse Effects** on the Cree culture of **NCN** and **Members**.

6.4.2 Adaptive Management. The **Parties** agree that neither the payment of the **Settlement Proceeds** nor the granting of any release under this **Agreement** eliminates or reduces any obligation on the **Limited Partnership** or **Hydro** for any remedial or mitigatory works, programs or adaptive management measures which may be required during the construction of the **Wuskwatim Project** or the **Wuskwatim Project Related Transmission Facilities** to implement any condition of any licence or regulatory approval.

6.4.3 Preservation or Restoration of Objects of Cultural Significance. **NCN** has identified one object of major cultural significance, namely the Footprints, (the "Footprints") that the **Parties** agree will be addressed through a process, and with resources drawn from sources of funding identified, in Subsections 6.4.3 to 6.4.13, inclusive, of this **Agreement**.

6.4.4 Timing of Process. The process outlined in Subsection 6.4.3 to 6.4.9, may actually commence prior to the **Date of the Agreement** and in any event as soon as possible following the **Date of this Agreement** and be fully complete and concluded to the extent practical in not more than four (4) months following the **Date of this Agreement**.

6.4.5 Cost of Process. **NCN**, in consultation with the **Limited Partnership**, shall prepare, and where appropriate revise, a budget for the reasonable costs which **NCN** anticipates it will incur in order to participate in the process outlined in Subsections 6.4.6 to 6.4.9 of this **Agreement** and subject to the limitation on funding under subsection 6.4.10 may use funds provided by **Hydro** to pay such costs provided that:

- (a) the actual invoice reflects the budget; and

(b) the work done accords with the work outlined in the budget.

6.4.6 Preliminary Meeting. Representatives of **NCN**, **Hydro** and the **Limited Partnership** shall meet as soon as reasonably possible with a small group of selected elders, spiritual advisors and a limited number of technical advisors to identify the issues of concern to **NCN** and **Members** in relation to the Footprints and some feasible and practical options which may potentially be available to address those concerns.

6.4.7 Past Arrangements. In assessing the potential options, the previous arrangements entered into and agreements reached between the **Parties**, or some of them, in relation to the Footprints, shall be taken into consideration.

6.4.8 Technical Process. Once the concerns of **NCN** and **Members** have been identified and a list of feasible and practical options to address those concerns has been prepared, the **Parties** will commission such further technical advice that they believe is required including advice on costing the various options, and after such advice is received refine the options consistent with such technical advice.

6.4.9 Community Process. Once the refined list of options is available, **NCN** shall consult with its **Members** to determine which option is preferred to address the identified concerns (the "preferred option").

6.4.10 Hydro Contribution. **Hydro** agrees to contribute a maximum of \$200,000.00 (Two Hundred Thousand Dollars) towards the costs related to the process referred to in this Section 6.4 and for implementation of the preferred option under subsection 6.4.13.

6.4.11 Wuskwatim Project Contribution. If the costs of the process and of implementing the preferred option exceed the \$200,000.00 (Two Hundred Thousand Dollars) contributed by **Hydro** under Subsection 6.4.10, up to an additional \$100,000.00 (One Hundred Thousand Dollars) will be made available from the **Limited Partnership** to cover those excess costs.

6.4.12 Contribution from Settlement Proceeds. If the costs of the process and of implementing the preferred option exceed \$300,000.00 (Three Hundred Thousand Dollars) then, notwithstanding the provisions of Subsection 3.2.5, up to an additional \$100,000.00 (One Hundred Thousand Dollars) may be advanced from the **Settlement Proceeds** in the **Taskinigahp Trust** to be applied towards such additional costs.

6.4.13 Implementation of Preferred Option. Once the **Parties** have agreed upon the preferred option, **NCN** may implement the preferred option using such funding as may be available to it including the balance, if any, of the \$200,000.00 (Two Hundred Thousand

Dollars) contributed by **Hydro**, the \$100,000.00 (One Hundred Thousand Dollars) contributed by the **Limited Partnership** the \$100,000.00(One Hundred Thousand Dollars) available from the **Settlement Proceeds** and any other source available to **NCN**, including the Nisichawayasihk Trust under the **1996 NFA Implementation Agreement**.

6.4.14 Wuskwatim Village Campsite . In addition to the other amounts payable by the **Limited Partnership** under Article 6, the **Limited Partnership** will contribute \$125,000.00 (One Hundred and Twenty-Five Thousand Dollars) towards the restoration of the Wuskwatim Village Campsite at Taskinigahp Falls including a ceremonial Tee Pee and cabins to be designed and developed by **NCN**.

## ARTICLE 7 - RECIPROCITY

### 7.1 RECIPROCITY

7.1.1 Introduction. This Article sets forth the general releases and indemnities, and the exceptions to both the general and specific releases contained in this **Agreement**.

### 7.2 RELEASES

7.2.1 Release - Limited Partnership. **NCN** hereby releases and forever discharges the **Limited Partnership** of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which **NCN**, its successors, assigns or those it represents, have had, now have or hereafter can, shall or may have, for, or by reason of, **Wuskwatim Adverse Effects** save and except as set forth in Section 7.4.

7.2.2 Release - Hydro. **NCN** hereby releases and forever discharges **Hydro** of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which **NCN**, its successors, assigns or those it represents, have had, now have or hereafter can, shall or may have, for, or by reason of, **Wuskwatim Adverse Effects** save and except as set forth in Section 7.4.

7.2.3 Satisfaction - Limited Partnership. Except as otherwise specifically provided in this **Agreement**, all existing and future rights of action and claims of **NCN**, and of **NCN** on behalf of each and every past, present and future **Wuskwatim Claimant** and their respective estates, in respect of any claims or causes of action relating to or arising out of **Wuskwatim Adverse Effects**, are fully satisfied by the **Agreement**.

7.2.4 Satisfaction - Hydro. Except as otherwise specifically provided in this **Agreement**, all existing and future rights of action and claims of **NCN**, and of **NCN** on

behalf of each and every past, present and future **Wuskwatim Claimant** and their respective estates, in respect of any claims or causes of action relating to or arising out of **Wuskwatim Adverse Effects**, are fully satisfied by the **Agreement**.

7.2.5 Covenant. NCN covenants and agrees not to commence or prosecute any action, claim, demand or proceeding on its own behalf or on behalf of any other person or entity against the **Limited Partnership** or **Hydro** with respect to any action, cause of action, suit, claim, demand, loss or damage which has been fully and finally concluded or with respect to which NCN has released or indemnified the **Limited Partnership** or **Hydro**.

### 7.3 INDEMNITIES

7.3.1 Indemnity. Except as set out in Subsection 7.3.2, NCN hereby undertakes and agrees to indemnify and save harmless the **Limited Partnership** or **Hydro** in respect of any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted, directly or indirectly, by any **Wuskwatim Claimant** by reason of any cause, matter or thing whatsoever attributable to **Wuskwatim Adverse Effects**. The obligation to pay any amount required under this indemnity provision shall be an obligation of the **Taskinigahp Trust** and shall be paid from the **Taskinigahp Trust** as provided in Article 18 of the **Taskinigahp Trust**. This indemnity does not cover the costs of the indemnified **Party** in resisting such claim and is conditional upon the indemnified **Party**:

- (a) forthwith, upon becoming aware of such claim, giving notice to NCN; and
- (b) supporting any application by NCN to be named as a party thereto.

7.3.2 Exceptions. Nothing in this **Agreement** shall require NCN to indemnify the **Limited Partnership** or **Hydro** for:

- (a) an amount, in aggregate, greater than the **Settlement Proceeds** which remain unspent in the **Taskinigahp Trust**;
- (b) matters for which the **Limited Partnership** or **Hydro** remains liable under Subsection 7.4.1;
- (c) breaches of this **Agreement** or future wrongful acts or omissions; and
- (d) an **SIL Claim**.

## 7.4 EXCEPTIONS TO RELEASE AND CONTINUING LIABILITY

7.4.1 Exception to Releases. It is understood and agreed that NCN does not waive, release, or indemnify the **Limited Partnership** or **Hydro** with respect liability and claims as follows:

- (a) liability and claims for personal injury and death, past and future, caused by or attributable to the **Wuskwatim Project** or the **Wuskwatim Project Related Transmission Facilities**;
- (b) liability and claims for **Wuskwatim Adverse Effects**, as further defined by Subsection 7.4.2, that were, at the **Date of this Agreement**, unknown and(or) unforeseen and not discernible or foreseeable with the exercise of due diligence;
- (c) liability and claims for human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the **Wuskwatim Project**;
- (d) liability and claims for the recovery and re-interment of human remains disinterred by flooding or shoreline deterioration caused by or attributable to the **Wuskwatim Project**;
- (e) trapping losses and incidental domestic losses, if any, which are suffered or incurred by **Members**, while engaged in trapping in on a registered trapline which the **Wuskwatim Project Related Transmission Facilities** cross, and which are a consequence of a **Wuskwatim Adverse Effects** arising from the development and operation of the **Wuskwatim Project Related Transmission Facilities**;
- (f) **SIL Claims**; and
- (g) liability and claims for **Wuskwatim Adverse Effects** arising from:
  - (i) any operations outside of, or in breach of any provision of, any **Closing Licenses**;
  - (ii) any breach of a **Fundamental Operating Feature**.

7.4.2 Limitation. The **Wuskwatim Adverse Effects** referred to in paragraph 7.4.1(b) are further limited to chemical, biological and physical impacts causing material damage to the adversely affected person, and attributable to the **Wuskwatim Project**. Alleged socio-economic damages to the adversely affected person, if any, are understood to be compensable only to the extent that they are caused by or attributable to such chemical, biological and physical impacts.

7.4.3 Notice. NCN shall give prompt notice of any occurrence which is alleged to have caused a **Wuskwatim Adverse Effect** as referred to in paragraph 7.4.1(b), together with all particulars and evidence in support of such occurrence and of any damages which are alleged to have resulted therefrom.

7.4.4 Apportionment of Liability. Where a claim is made against either **Hydro** or the **Limited Partnership** with respect to any matter under Subsection 7.4.1 that is excepted from the releases provided under this **Agreement** and there is an issue as to whether the loss or damage suffered was the result of a **Wuskwatim Adverse Effect** or arose out of Existing Development as defined under the **1996 NFA Implementation Agreement**, the apportionment of responsibility to compensate for such claim, as between them and for no other purpose, shall be consistent with the following provisions:

- (a) **Hydro** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (a) unless the circumstances giving rise to such claim occurred on or within the area of the **Wuskwatim Project** as identified on a legal map demarcating the Wuskwatim Project Land and Waters and which is shown generally on a figure entitled Wuskwatim Project Land and Waters Forming Part of the Adverse Effects Agreement being Figure No. 1-00184-DE- Revision 01 a copy of which is attached as Schedule 7.1, including without limitation the Borrow Pits and the Access Road and construction camp, in which event the **Limited Partnership** shall assume responsibility;
- (b) **Hydro** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (b) except to the extent that **Hydro** is able to establish that its Project, as defined under the **1996 NFA Implementation Agreement**, but not including the **Wuskwatim Project**, was not the cause of the adverse effect giving rise to the claim, in which event the **Limited Partnership** shall assume responsibility;

- (c) **Hydro** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (c);
- (d) **Hydro** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (d);
- (e) **Hydro** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (e);
- (f) the **Limited Partnership** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (f); and
- (g) the **Limited Partnership** shall, as between **Hydro** and the **Limited Partnership**, assume responsibility for any claim arising out of a matter excepted from the releases under paragraph 7.4.1 (g).

For greater certainty, this allocation of responsibility is strictly and solely an internal allocation between the **Limited Partnership** and **Hydro** and is intended only to apply to, bind and be enforceable by the **Limited Partnership** and **Hydro** and shall not be used for any other purpose, including as supporting any factual determination or as an admission of liability or responsibility for any event, or to any other person or entity.

7.4.5 Disputes. If there is a dispute between **Hydro** and the **Limited Partnership** as to whether the **Limited Partnership** or **Hydro** is the entity responsible to assume liability under Subsection 7.4.4, with respect to any particular occurrence, that dispute shall be resolved pursuant to the dispute resolution provisions of Section 5.4.

7.4.6 Future Acts or Omissions. Nothing in this **Agreement** shall relieve any **Party** of liability for breaches of this **Agreement**, future breaches of fiduciary obligations, future negligent or unlawful acts or omissions, or future wilful misconduct, on their own part, or on the part of those for whom they are responsible at law.

7.4.7 Liability for Acts or Omissions of Other Parties No **Party** shall be liable or responsible for things done or omitted to be done by any other **Party**.



## ARTICLE 8 - GENERAL PROVISIONS

### 8.1 INTRODUCTION

8.1.1 Introduction. This Article contains provisions of a general nature relating to this **Agreement**.

### 8.2 INTERPRETATION

8.2.1 Headings. The Article and Section headings, and the introductory provision in each Article are for reference and information purposes only, and shall not affect in any way the meaning or interpretation of this **Agreement**.

8.2.2 Numbers, Plural. Words importing the singular number only shall include the plural, and vice versa, as the context may require; and words importing persons shall include firms, governments and corporations, and vice versa, as the context may require.

8.2.3 Metric Measure. Subject to any legislative requirement, in the event of a conflict between metric and Imperial measure, metric measure shall prevail, except, where the original data or measuring device was in imperial measure, the Imperial measure shall prevail. The **Parties** agree that the metric conversion rate to be used for purposes of this **Agreement** shall be 1 foot equals 0.3048 meters and 1 meter equals 3.2808 feet.

8.2.4 Interpretation Aids. In any interpretation of this **Agreement**, only the **Agreement** itself shall be considered and no other documents, notes, memoranda, electronic record, et cetera shall be referred to or considered.

8.2.5 Further Action. Each of the **Parties** to this **Agreement** will, from time to time, and without further consideration, execute and deliver such other instruments or documents and take such further action as required, to more effectively complete any matter provided for in this **Agreement**.

### 8.3 PRESUMPTIONS

8.3.1 No Presumptions. The **Parties** have endeavoured to ensure that the terms of this **Agreement** are as clear as possible and in interpreting this **Agreement** there shall be no presumption in favour of or against any **Party**.

## 8.4 CONTINGENCY

8.4.1 No Contingency. No portion of the **Settlement Proceeds** shall be used to pay a contingency fee or bonus to any member of **Chief and Council**, or to any advisor or legal council acting on behalf of NCN in relation to, or as payment for, work done in negotiating, finalizing or documenting this **Agreement**.

## 8.5 PARTIES

8.5.1 Binding on Parties. This **Agreement** shall be binding upon and enure to the benefit of the **Parties** and their respective successors and permitted assigns. Except for **Members** in their capacity as **Wuskwatim Claimants** or as beneficiaries of the **Taskinigahp Trust**, nothing in this **Agreement** is intended to confer upon any person not a **Party** to this **Agreement** any rights or remedies under or by reason of this **Agreement**.

8.5.2 Decisions of Arbitrator Binding. Whether or not it is named as a party in an arbitration, the **Taskinigahp Trust** shall be bound:

- (a) by decisions of the **Arbitrator** under section 5.3 awarding compensation from the **Taskinigahp Claims Account**; and
- (b) by decisions of the **Arbitrator** under section 5.4 resolving a dispute in relation to the payment of an indemnity from the **Taskinigahp Trust**;

## 8.6 NOTICE

8.6.1 Notice. All notices and other communication provided for in this **Agreement** shall be in writing, and shall be given by personal delivery or sent by registered mail or facsimile, charges pre-paid and confirmed by telephone, to the applicable addresses or facsimile numbers set out in this section, or to addresses or facsimile numbers which a **Party** may from time to time designate to the other **Parties**. Any such communication 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 has been made during the 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. The addresses for the **Parties** are:

To **NCN**:

Nisichawayasihk Cree Nation  
Attention: **Chief and Council**  
General Delivery  
Nelson House MB ROB 1AO  
Fax Number: 204-484-2392

To **Hydro**:

Manitoba Hydro  
Attention: General Counsel  
3<sup>rd</sup> Floor, 820 Taylor Avenue  
Winnipeg MB R3C 2P4  
Fax Number: 204-474-4947

To the **Limited Partnership**:

Wuskwatim Power Limited Partnership  
c/o 5022649 Manitoba Ltd.  
Attention: Chairman  
3<sup>rd</sup> Floor, 820 Taylor Avenue  
Winnipeg MB R3C 2P4  
Fax Number: 204-474-4947

To the **Taskinigahp Trust**:

Address of **Taskinigahp Trust** will be the address of the **Taskinigahp Corporate Trustee**

## 8.7 ASSIGNMENT

8.7.1 Assignment. Except as expressly provided in this **Agreement**, neither this **Agreement** nor any portion or provision of this **Agreement**, may be assigned without prior written permission of all of the **Parties**.

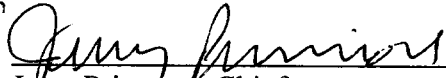
## 8.8 GOVERNING LAW

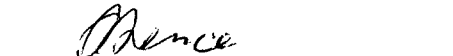
8.8.1 Laws in Manitoba. This **Agreement** shall be governed by, and construed in accordance with, the federal and provincial laws from time to time in force in the Province of Manitoba.

8.8.2 Meeting of Parties. Any **Party** may, at any time, convene a meeting of the **Parties** for purposes relating to the **Agreement** by providing not less than thirty (30) days written notice setting forth the purpose, date, time, and place in Winnipeg or any other agreed place in Manitoba, for such meeting.


IN WITNESS WHEREOF the **Parties** have executed this Agreement as of the day and year first above written.

**NISICAWAYASIIHK CREE NATION**


  
Jerry Primrose, Chief

  
Jimmy Hunter-Spence, Councillor

D'Arcy Linklater, Councillor

  
Shirley L. Linklater, Councillor

  
Agnes M. Spence, Councillor

  
William Elvis Thomas, Councillor

*Matthews Linn*

**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: [Signature]  
Name: Robert B. Brennan  
Title: President and Chief Executive Officer

Per: [Signature]  
Name: Robert D. Bettner  
Title: Assistant Corporate Secretary

**THE TASKINIGAHP TRUST**

[Signature] [Signature]  
Witness James Warren, Trustee

[Signature] [Signature]  
Witness Agnes M. Spence, Trustee

[Signature] [Signature]  
Witness Diane Linklater, Trustee

[Signature] [Signature]  
Witness Darcy Linklater, Jr., Trustee

THE CANADA TRUST COMPANY, as corporate trustee of the Taskinigahp Trust

Per: [Signature]  
Name: BILL WILLIAMS  
Title: VICE PRESIDENT- PRIVATE TRUST

Per: [Signature]  
Name: ANITA SCHREINER  
Title: TRUST OFFICER

## SCHEDULE 1.1

### FINANCIAL SCHEDULE

Subject to and in accordance with the terms of this **Agreement, Settlement Proceeds** in relation to **Wuskwatim Adverse Effects** in the aggregate amount of \$ 5, 700, 000.00 (Five Million Seven Hundred Thousand Dollars) shall be paid to the **Taskinigahp Trust** (on behalf of **NCN** pursuant to the **NCN Deed of Assignment**) as follows:

- a) \$500,000.00 on the **Date of this Agreement**;
- b) \$1,000,000.00 within 30 days of the **Construction Start Date**;
- c) \$1,000,000.00 within 30 days of certification by the Project Manager of substantial completion of the Access Road; and
- d) the balance of \$3,200,000.00 within 30 days of commencement of work under the **General Civil Contract**.

**SCHEDULE 4.1**

**CLAIM FOR COMPENSATION FORM**

**WUSKWATIM CLAIMANT**

Name:

Address:

City/Town:

Commercial Fishing Licence Number (if applicable)

Commercial Trapping Licence Number (if applicable)

**DETAILS OF CLAIM**

Date & Time of Injury/Loss/Damage:

Activity at time of Injury/Loss/Damage:

Cause of Injury/Loss/Damage:

Compensation Claimed:

Nature of Injury:

Goods or Property Lost or Damaged:

General Description

Make

Model

Serial No.

Year Manufactured

Year Purchased

Purchase Price

Location where Injury/ Loss/ Damage occurred (attach Sketch or Map):

Names of Witnesses to Injury/Loss/ Damage:

Is the claim covered by insurance in whole or in part: Yes? \_\_\_\_\_, No? \_\_\_\_\_.

If yes, give particulars:

If yes, has a claim been made under the insurance policy? Yes? No? .

Give particulars:

**WUSKWATIM CLAIMANT'S STATEMENT:**

I believe the injury, loss or damage described above was caused by the **Wuskwatim Project** because:

(insert details)

In filing this Claim, I recognize that this Claim form shall be a public document, and I consent to **NCN** and its agents and employees disclosing this form to the public.

I hereby certify that the above information is correct.

(Signature of **Wuskwatim Claimant**) (date)

**SCHEDULE 4.2**

**NOTICE OF RECEIPT OF CLAIM FOR COMPENSATION**

IS /ARE CURRENTLY  
INVESTIGATING THE ATTACHED CLAIM FOR COMPENSATION,  
AND A DECISION ON THIS MATTER WILL BE MADE ON OR  
AFTER . ANY PERSON WHO WISHES TO COMMENT  
ON THIS CLAIM SHOULD DIRECT THEIR COMMENTS TO  
BEFORE THAT DATE.



## SCHEDULE 4.3

### REPORT, DECISION AND RIGHT TO APPEAL

A Claim for Compensation from the **Taskinigahp Claims Account** of the Taskinigahp Trust was filed by \_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_\_ :  
(NAME)

I, the **Wuskwatim Claims Officer**, or we, the members of a claims panel or **Chief and Council**,

Report and Decide as follows:

1. From our investigation of the Claim,
  - (a) the applicant meets the criteria of a **Wuskwatim Claimant**;  
the applicant does not meet the criteria of a **Wuskwatim Claimant**;
  - (b) the applicant was a **Member** at the time the **Wuskwatim Adverse Effect** occurred;  
the applicant was not a **Member** at the time the **Wuskwatim Adverse Effect** occurred;
  - (c) the claim is not an **SIL Claim** within the meaning of the **NCN Adverse Effects Agreement**;  
the claim is an **SIL Claim** within the meaning of the **NCN Adverse Effects Agreement**;
  - (d) the applicant is not an insurer claiming by way of subrogation;  
the applicant is an insurer claiming by way of subrogation;
  - (e) the claim has been brought within 4 years of the date the loss or damage became evident to the **Wuskwatim Claimant**;  
the claim has not been brought within 4 years of the date the loss or damage became evident to the **Wuskwatim Claimant**;
  - (f) all of the loss or damage is the result of or attributable to an **Wuskwatim Adverse Effect** of the **Wuskwatim Project**;  
part of the loss or damage is the result of or attributable to an **Wuskwatim Adverse Effect** of the **Wuskwatim Project**;  
none of the loss or damage is the result of or attributable to an **Wuskwatim Adverse Effect** of the **Wuskwatim Project**;
  - (g) the loss or damage is compensable in full from the **Taskinigahp Claims Account** of the **Taskinigahp Trust**;  
the loss or damage is compensable in part from the **Taskinigahp Claims Account** of the **Taskinigahp Trust**;  
the loss or damage is not compensable from the **Taskinigahp Claims Account** of the **Taskinigahp Trust**;
  - (h) the loss or damage is not compensable from the **Taskinigahp Claims Account** of the **Taskinigahp Trust** because the claim appears to be one that should be dealt with as an ongoing liability of **Hydro**, under Subsection 7.4.1 of the **NCN Adverse Effects Agreement**, and a copy of this claim has been forwarded to **Hydro**;

the loss or damage is not compensable in part from the **Taskinigahp Claims Account** of the **Taskinigahp Trust** because the claim appears to be one that, in part, should be dealt with as an ongoing liability of **Hydro** under Subsection 7.4.1 of the **NCN Adverse Effects Agreement**, and a copy of this claim has been forwarded to **Hydro**;

the loss or damage is not compensable from the **Taskinigahp Claims Account** of the **Taskinigahp Trust** because the **Wuskwatim Claimant** otherwise has been fully compensated;

the loss or damage is not compensable in full from the **Taskinigahp Claims Account** of the **Taskinigahp Trust** because the **Wuskwatim Claimant** otherwise has been partially compensated by

- (i) the reasonable compensation payable from the **Taskinigahp Trust** is \$

Additional Reasons:

The **Wuskwatim Claims Officer** or the following member of a claims panel did not take part in this decision, due to an interest in this claim that could have affected their impartiality.

Signed at Nelson House, Manitoba, this                      day of                      ,                      .

NOTICE: THE CLAIMANT MAY APPEAL THIS MATTER TO THE **ARBITRATOR**, BY MAKING A WRITTEN REQUEST IN THE FOLLOWING FORM TO **CHIEF AND COUNCIL** WITHIN 21 DAYS OF THE DELIVERY OF THIS DECISION.

**NOTICE OF REFERRAL**

TO: **NCN Chief and Council**

Band Office

Nelson House, Manitoba

TAKE NOTICE that the decision dated                      , 2                      of **Chief and Council**, the **Wuskwatim Claims Officer** or the claims panel under Article 4 of the **NCN Adverse Effects Agreement**, is not acceptable to the undersigned and is referred to the **Arbitrator** under Article 4 and 5 of such **Agreement**.

I understand that, if an arbitration hearing is held, the **Arbitrator** may award costs in favour of any party. By referring this matter to arbitration, I accept contractual liability for any costs that may be awarded against me.

In filing this Referral to Arbitration, I recognize that this form shall be a public document; that any arbitration hearing shall be open to the public; and that any decision or award of the **Arbitrator** shall be a public document. I consent to **NCN** and its agents

and employees disclosing this form and any decision or award of the **Arbitrator** to the public.

I have read this Notice of Referral and I understand it.

DATED at Nelson House, Manitoba this      day of                      , 2      .  
(signature)

**SCHEDULE 4.4**

**WUSKWATIM CLAIMANT ACCEPTANCE AND RELEASE**

I, \_\_\_\_\_ (name of Claimant, or “on behalf of Association or Corporation”) \_\_\_\_\_, filed a claim dated \_\_\_\_\_, under Article 4 of the **NCN Adverse Effects Agreement** in respect of damage or loss that I was aware of at the date of filing the claim, arising from an **Wuskwatim Adverse Effect** caused by the development or operation of works of the **Wuskwatim Project**. A decision on the claim was made by (**Chief and Council**, the **Wuskwatim Claims Officer**, a claims panel or the **Arbitrator** appointed under the **NCN Adverse Effects Agreement**, or the Manitoba Court of Appeal), dated \_\_\_\_\_, a copy of which is attached.

That decision is a fully satisfactory settlement of the damage or loss referenced in the claim dated \_\_\_\_\_.

In consideration of the payment of (amount) \_\_\_\_\_, I hereby fully and finally release **NCN, Chief and Council**, the **Taskinigahp Trust**, the **Wuskwatim Claims Officer** and the **Taskinigahp Trustees** with respect to this claim, and I will bring no further claim for the same damage or loss against any other person.

I have been advised by \_\_\_\_\_, the **Wuskwatim Claims Officer**, a member of **Chief and Council** or a **Taskinigahp Trustee**, that I have the right to obtain legal counsel in connection with the execution of this release.

(I have obtained) or (I hereby waive my right to) the advice of legal counsel in connection with this release.

I have read this release and I understand it.

Dated at \_\_\_\_\_, Manitoba this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Witness)

(Claimant)

## SCHEDULE 4.5

### UNDERTAKING

I, \_\_\_\_\_, being an appointee of the **Chief and Council** of **NCN** to serve as a **Wuskwatim Claims Officer** or alternate Claims Officer or a member of a Claims Panel, state and undertake as follows:

1. I have read, or had explained to me, the terms of the **NCN Adverse Effects Agreement** with particular reference to the provisions relating to the processes for administering and deciding claims for compensation.
2. I hereby accept and will honestly and faithfully discharge the duties and responsibilities of a **Wuskwatim Claims Officer** or alternate Claims Officer, or a member of a Claims Panel, during my term in such office.
3. I have been advised by \_\_\_\_\_, a member of **Chief and Council**, that I have the right to obtain legal counsel in connection with the execution of this undertaking.
4. (I have obtained,) or (I hereby waive my right to) the advice of legal counsel in making this undertaking.

DATED at Nelson House, Manitoba on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(signature)

**SCHEDULE 4.6**

**REFERRAL TO ARBITRATION**

**TO: NCN Chief and Council**  
Band Office  
Nelson House, MB

Take Notice that the decision of the **Wuskwatim Claims Officer** or the claims panel, or **Chief and Council** dated \_\_\_\_\_ under Article 4 of the **NCN Adverse Effects Agreement** is not acceptable to the undersigned and the issue is referred to the **Arbitrator** under Article 4 and 5 of such **Agreement**.

I understand that, if an arbitration hearing is held, the **Arbitrator** may award costs in favour of any party. By referring this matter to arbitration, I accept contractual liability for any costs that may be awarded against me.

In filing this Referral to Arbitration, I recognize that this form shall be a public document; that any arbitration hearing shall be open to the public; and that any decision or award of the **Arbitrator** shall be a public document. I consent to **NCN** and its agents and employees disclosing this form and any decision or award of the **Arbitrator** to the public.

I have read this referral to arbitration and I understand it.

DATED at Nelson House, Manitoba, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(signature)



## **SCHEDULE 6.1**

### **SAFETY MEASURES**

#### **Safe Ice Trails**

- One trail to cross Wuskwatim Lake and another trail to be marked near the Wuskwatim Brook area where the winter trail crosses.
- The two trails to be clearly marked with highly reflective markers.

#### **Marker Buoys**

- All islands to be marked with Buoys or Channel markers.
- Buoys and Channel markers to mark safe routes for boaters.

#### **Winter Trails**

- Five (5) winter trails to be provided as per attached map
  - Trail 1 33kms
  - Trail 2 8kms
  - Trail 3 (Old Bombardier Road) 33km
  - Trail 4 (Wuskwatim - Opegano Lake) 10kms
  - Trail 5 (Wuskwatim - Bison Lake) 10kms

#### **Cabins and Wuskwatim Campsite**

- Cabins to be built at Mid-Point on long trails and at Caribou Rapids.
  - 3 - 16' x 20' Cabins
- Cabin at Wuskwatim with cook stove and secure room for storage of equipment
  - 1 - 16' x 20' Cabin
- Cabins to be maintained complete with stoves, firewood, emergency supplies including food and a radio.
- Clear and Maintain Wuskwatim Village Campsite annually.

#### **Docks**

- 2 docks to be provided on Wuskwatim Lake to be placed at locations determined by the NCN Future Development Team



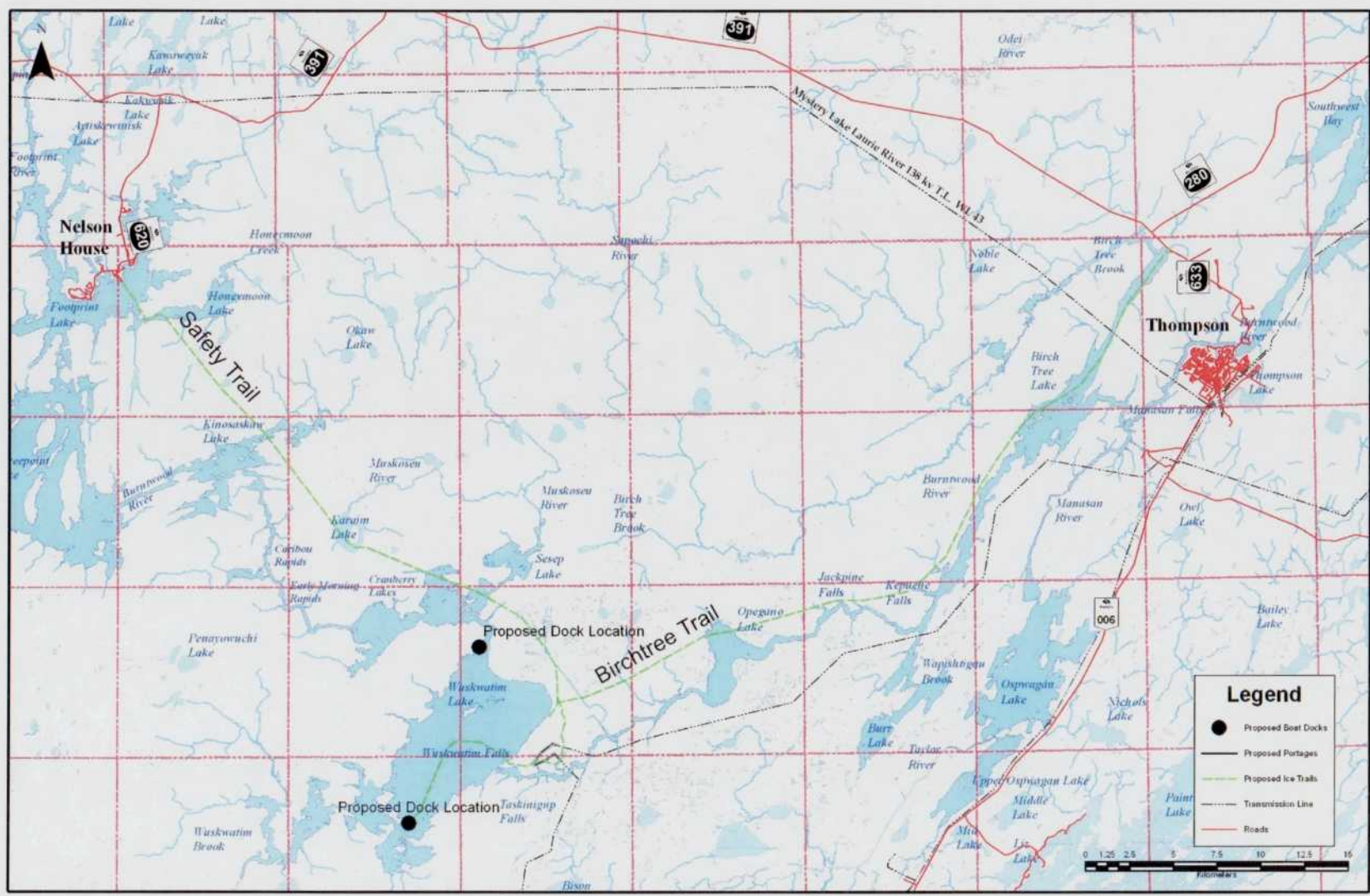
**Educational Materials**

- Annual provision of up-to-date educational materials on the hazards of the lakes, rivers, rapids water fluctuations and slush ice conditions.

**Signs**

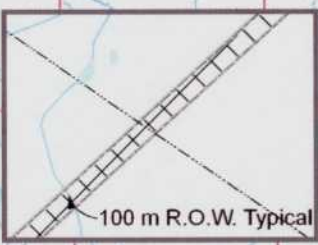
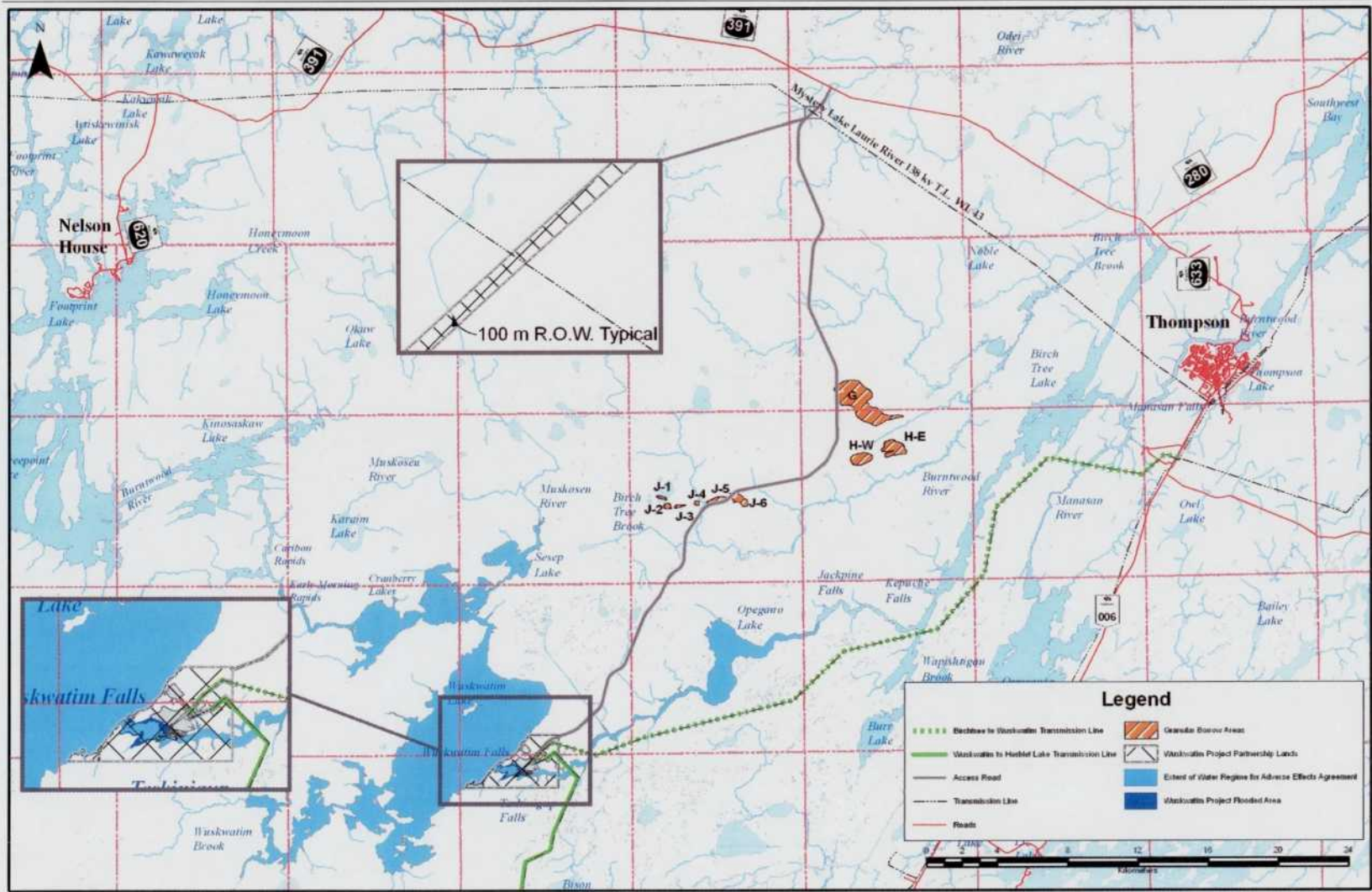
- Highly reflective signs identifying main travel routes to be posted downstream of Early Morning Rapids.
- Highly reflective signs to be posted on way towards Opegano Lake warning people of the danger.

**SCHEDULE 6.2**  
**SAFETY MEASURES MAP**



SCHEDULE 7.1

WUSKWATIM PROJECT ANTICIPATED AFFECTED AREA



**Legend**

	Backbone to Wuskwatim Transmission Line		Gravelly Erode Areas
	Wuskwatim to Herdell Lake Transmission Line		Wuskwatim Project Partnership Lands
	Access Road		Extent of Water Regime for Address Effects Agreement
	Transmission Line		Wuskwatim Project Flooded Area
	Roads		

