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**NCN FINANCING AGREEMENT**

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**between**

**NISICHAWAYASIIHK CREE NATION**

**- and -**

**TASKINIGAHP POWER CORPORATION**

**- and -**

**THE MANITOBA HYDRO-ELECTRIC BOARD**

**DATED June 28, 2006**

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**NCN FINANCING AGREEMENT**

**DATED** the 28th day of June, 2006

**B E T W E E N:**

**NISICHAWAYASIIK CREE NATION,**  
(hereinafter referred to as "NCN")

**- and -**

**TASKINIGAHP POWER CORPORATION,**  
(hereinafter referred to as "TPC")

**- and -**

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

The parties agree as follows:

**ARTICLE I**  
**INTERPRETATION**

**1.1**        **Defined Terms.**

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

"**Additional Borrowing Authorizations**" has the meaning specified in Section 4.1(4).

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

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

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

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

“**Approved Funds**” has the meaning ascribed thereto in the TPC Financing Agreement.

“**Auditors**” means such firm of chartered accountants as may be selected by the directors of TPC and approved by NCN from time to time to audit TPC, provided that such firm of chartered accountants is qualified to perform audits in Manitoba.

“**Authorization**” means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Entity having jurisdiction over such Person, whether or not having the force of Law.

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

“**Borrowing Notice**” has the meaning specified in Section 3.2.

“**Business**” has the meaning ascribed thereto in the TPC Financing Agreement.

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

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

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

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

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

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

rate of interest for the Ten Year Manitoba Canadian Dollar Bond used in the calculation of the said Canadian Ten Year Spread; or

- (B) less the Canadian Ten Year Spread, as at 10:00 a.m. (Winnipeg time), for such day, if the Ten Year Canada Bond Rate used in the calculation of the said Canadian Ten Year Spread is greater than the rate of interest for the Ten Year Manitoba Canadian Dollar Bond used in the calculation of the said Canadian Ten Year Spread.

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

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

**“Change of Control”** means any change which results in NCN no longer directly owning beneficially on a fully diluted basis 100% of the Capital Stock of TPC (and the unfettered right to direct the exercise of voting rights in respect thereto in accordance with the provisions of the bare trustee declaration pursuant to which the Chief or a Councillor of NCN, as the registered owner of 100% of the Capital Stock of TPC, as bare trustee for NCN, commits to vote such Capital Stock in accordance with the direction of Chief and Council of NCN), and for greater certainty the NCN Deed of Assignment does not effect a Change of Control.

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

“**Chief and Council**” has the meaning ascribed thereto in the PDA.

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

“**Collateral**” means TPC’s Units and the Distributions thereon in respect of which Hydro has or will have or is intended to have a Lien pursuant to the Security Documents.

“**Corporate Distributions**” means, in respect of any Person, whether or not a corporation, any form of distribution of its profits, including in each case any:

- (i) declaration or payment of any dividend on its Capital Stock; and
- (ii) payment to purchase, redeem, retire or acquire or reduce the stated capital of any of its Capital Stock, or any option, warrant or other right to acquire any such Capital Stock, or apply or set apart any of its Property therefore.

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

“**Council Resolution**” has the meaning ascribed thereto in the PDA.

“**Credit Facility Repayment Certification**” has the meaning ascribed thereto in the TPC Financing Agreement.

“**Cure Period**” has the meaning specified in Section 8.1(c).

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



- (i) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (ii) all obligations of such Person, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person; and
- (iii) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Debt is to be determined (excluding trade payables incurred in the ordinary course of business).

**"Distributions"** means distributions of cash of the Limited Partnership to TPC and the return of any part of the Aggregate Capital Contributions by the Limited Partnership to TPC.

**"Dividends"** has the meaning ascribed thereto in the NCN Deed of Assignment.

**"Dividend Credit Advances"** means advances made by Hydro to NCN in Canadian Dollars under this Agreement and **"Dividend Credit Advance"** means any one of such Dividend Credit Advances.

**"Dividend Credit Facility"** means the non-revolving credit facility to be made available to NCN by Hydro in the maximum amount of the Dividend Credit Facility Commitment and in accordance with the terms hereof.

**"Dividend Credit Facility Commitment"** means the aggregate of the amount calculated on each Anniversary Date prior to, but not including, the Maturity Date derived from the formula  $(A \times B) - C$ , where A is the Canadian Ten Year Rate on that Anniversary Date less 2.5%; B is TPC's Own Invested Cash on that Anniversary Date; and C is the aggregate amount

of all Distributions from the Limited Partnership on TPC's Dividend Cash Units actually paid out to TPC (and not paid to Hydro pursuant to the irrevocable assignment and direction under the Loan Documents) in the 12-month period ending on such Anniversary Date. (For greater certainty, any Distributions on TPC's Dividend Cash Units which TPC was entitled to receive from the Limited Partnership pursuant to the provisions of the Limited Partnership Agreement but which were paid to Hydro pursuant to the provisions of the Loan Documents or pursuant to the provisions of the TPC Financing Agreement are not, for the purposes of the determination of the Dividend Credit Facility Commitment and any availability thereunder only, included as Distributions on TPC's Dividend Cash Units received by TPC.)

**"Dividend Credit Facility Commitment Cap"** means the amount calculated as at the first Anniversary Date (but after any mandatory payments required by Section 2.6(4) of the TPC Financing Agreement have been made) equal to four times (A) where, (A) is (i) TPC's Own Invested Cash on the first Anniversary Date; less (ii) any monies used to repay a Cash Call Credit Advance (as that term is defined in the TPC Financing Agreement); and less (iii) any monies provided to the Limited Partnership pursuant to the Limited Partnership Payment Certification to fund TPC's Operating Cash Call Requirements (as that term is defined in the TPC Financing Agreement). The amounts referred to in (ii) and (iii) hereof will only be required to be deducted from (i) if they would otherwise form part of the amount referred to in (i) hereof.

**"Event of Default"** has the meaning specified in Section 8.1.

**"Equity Credit Advances"** has the meaning ascribed thereto in the TPC Financing Agreement.

**"Equity Credit Facility"** has the meaning ascribed thereto in the TPC Financing Agreement.

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

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

“**Financial Year**” means, in relation to TPC, the financial year of TPC determined by the board of directors of TPC.

“**Future Material Agreements**” has the meaning specified in Section 6.1(12).

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

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

“**Government Funds**” has the meaning ascribed thereto in the TPC Financing Agreement.

“**Governmental Entity**” means any:

- (i) federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign;
- (ii) any agent, commission, board, or authority of any of the foregoing; or
- (iii) any body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

“**Guarantee**” means an unconditional, irrevocable, continuing guarantee executed by TPC in favour of Hydro of the payment and performance by NCN of all of the Obligations on

terms and conditions acceptable to Hydro, acting reasonably, and consistent with the terms of this Agreement, which Guarantee shall be delivered by TPC to Hydro at Initial Closing.

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

“**Hydro Account**” means such account or accounts maintained by Hydro at the Royal Bank of Canada, as Hydro from time to time notifies NCN for the purposes of this Agreement.

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

“**Hydro Liens**” has the meaning ascribed thereto in the TPC Financing Agreement.

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

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

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

“**Lien**” means, with respect to any Property, any charge, mortgage, pledge, hypothecation, security interest, lien, conditional sale (or other title retention agreement or lease in the nature thereof), lease, servitude, assignment, adverse claim, defect of title, restriction, trust, or other encumbrance of any kind in respect of such Property, whether or not filed, recorded or otherwise perfected under applicable Laws.

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

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

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

“**Limited Partnership Payment Certification**” has the meaning ascribed thereto in the TPC Financing Agreement.

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

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

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

“**Material Adverse Business Effect**” means a material adverse effect (or a series of adverse effects, none of which is material in or of itself, but which cumulatively results in a material adverse effect) on:

- (i) the ability of NCN or TPC to perform any of their material obligations under the Loan Documents; or
- (ii) the ability of Hydro to enforce any of the material obligations of NCN or TPC under the Loan Documents, where Hydro, acting reasonably, has determined that its ability to enforce the said material obligations cannot be cured by Hydro within a reasonable period of time or without Hydro being materially adversely affected, notwithstanding that NCN and TPC have provided their written undertaking to assist Hydro in the manner set out therein to cure the inability of Hydro to enforce the said material obligations of NCN or TPC under the Loan Documents.

“**Material Agreements**” has the meaning specified in Section 5.1(11)(c).

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

“**Member**” means a person who at the relevant time is, or 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 a 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”** has the meaning ascribed thereto in the PDA.

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

**“Obligations”** has the meaning specified in Section 7.1.

**“Over-Drawn Amount”** has the meaning specified in Section 2.5 (1).

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

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

- (i) Liens for Taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Person in good faith by proper legal proceedings if, in Hydro’s opinion:
  - (A) adequate security has been provided to ensure the payment of such taxes, assessments and charges;
  - (B) adequate reserves with respect thereto are maintained on the books of such Person, in accordance with GAAP; and
  - (C) in each case, such Liens will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property;

- (ii) Liens resulting from any judgment rendered or Claim filed against such Person which such Person shall be contesting in good faith by proper legal proceedings if, in Hydro's opinion:
  - (A) adequate security has been provided to ensure the payment of such judgment or Claim;
  - (B) adequate reserves with respect thereto are maintained on the books of such Person, in accordance with GAAP; and
  - (C) in each case, such Liens will not materially interfere with use of such Property by such Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
- (iii) undetermined Liens arising in the ordinary course of business which have not at such time been filed pursuant to Law against such Person or which relate to obligations not due or delinquent;
- (iv) Liens arising in the ordinary course of business which are not registered against title to the Collateral and are not overdue for a period of more than thirty (30) days or which are being contested at the time by the Person in good faith by proper legal proceedings if, in Hydro's opinion, (i) adequate security has been provided to ensure payment of such Liens; (ii) adequate reserves with respect thereto are maintained on the consolidated books of such Person in accordance with GAAP; and (iii) in each case, such Liens will not materially interfere with use of such Property by the Person or involve any immediate danger of the sale, forfeiture or loss of such Property;
- (v) any Lien, payment of which has been provided for by the depositing with Hydro of an amount in cash, or the obtaining of a surety bond satisfactory



to Hydro, in its absolute discretion, sufficient in either case to pay or discharge such Lien and which deposit or bond Hydro is authorized to use or draw upon for that purpose;

- (vi) Liens securing Purchase Money Debt; provided that: (i) such Liens shall extend only to the specific Property of TPC acquired with the proceeds of such Purchase Money Debt (and not any other portion of the Collateral); and (ii) recourse in respect of such Liens shall be limited to such specific Property;
- (vii) the Hydro Liens; or
- (viii) any other Lien approved in writing in advance by Hydro in its unfettered discretion.

“**Person**” means an individual, partnership, corporation, trust, unincorporated association, syndicate, joint venture, band within the meaning of the *Indian Act* (Canada) or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

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

“**Purchase Money Debt**” means, with respect to any Person, all obligations of such Person incurred to finance the acquisition of Property.

“**Receiver**” means a receiver, receiver and manager or other Person having similar powers or authority appointed by Hydro or by a court at the instance of Hydro in respect of the Collateral or any part thereof.

“**Repayment Notice**” has the meaning specified in Section 2.6(1).

“**Reserve**” shall have the meaning ascribed thereto in the *Indian Act* (Canada).

“**Revenue Advance Consolidation Agreement**” has the meaning ascribed thereto in the PDA.

“**Sale**” has the meaning ascribed thereto in the TPC Financing Agreement.

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

“**Subsidiary**” means, at any time, as to any Person, any corporation or other Person, if at such time the first-mentioned Person owns, directly or indirectly, securities or other ownership interests in such corporation or other Person, having ordinary voting power sufficient to elect a majority of the board of directors or persons performing similar functions for such corporation or other Person or has the power to determine the policies and conduct of the management of such corporation or other Person and for greater certainty includes a Subsidiary of a Subsidiary.

“**TPC**” means Taskinigahp Power Corporation, a corporation that is wholly owned by NCN beneficially, and by the Chief or a Councillor of NCN as registered owner and bare trustee for NCN.

“**TPC Financing Agreement**” means a financing agreement dated even date herewith between TPC and Hydro.

“**TPC’s Cash Units**” has the meaning ascribed thereto in the TPC Financing Agreement.

**“TPC’s Dividend Cash Units”** means:

- (i) on the Final Closing Date, (but after any mandatory payments required by Section 2.6(3) of the TPC Financing Agreement have been made and after any sale of TPC’s Units pursuant to Article V or Article VI of the TPC Financing Agreement has closed in accordance with Article VII of the TPC Financing Agreement), that number of TPC’s Units equal to (A) divided by (B) where (A) equals the number of TPC’s Units on the Final Closing Date multiplied by TPC’s Own Invested Cash as of that date; and (B) equals the sum of: (i) the aggregate amount of Equity Credit Advances which remain outstanding on that date; and (ii) TPC’s Invested Cash as of that date;
- (ii) on any particular day after the Final Closing Date (the **“Measurement Date”**) until the date that the Equity Credit Facility (as defined in the TPC Financing Agreement) has been paid out in full, that number of TPC’s Units equal to (A) divided by (B) where (A) is a product of: (i) the number of TPC’s Dividend Cash Units on the Final Closing Date; multiplied by (ii) the number of TPC’s Units on the Measurement Date; and (B) equals the number of TPC’s Units on the Final Closing Date; and
- (iii) on the date when the Equity Credit Facility has been paid out in full, all of TPC’s Units shall be deemed to be TPC’s Dividend Cash Units.

**“TPC’s Invested Cash”** has the meaning ascribed thereto in the TPC Financing Agreement.

**“TPC’s Own Funds”** has the meaning ascribed thereto in the TPC Financing Agreement.

“**TPC’s Own Invested Cash**” means on any day, the amount of TPC’s Invested Cash on that day, excluding any portion which is not TPC’s Own Funds.

“**TPC’s Units**” means, at any time, all of the Units owned by TPC.

“**Taskinigahp Trust**” has the meaning ascribed thereto in the PDA.

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

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

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

“**Time of Final Closing**” means 10:00 o’clock in the forenoon, Winnipeg time, on the Final Closing Date.

“**Total Outstandings**” means, at any time, with respect to the Dividend Credit Facility, the aggregate amount in Canadian Dollars of all outstanding Dividend Credit Advances.

“Unit” means one of the units in the Limited Partnership issued to and subscribed for by a Limited Partner pursuant to the Limited Partnership Agreement, and “Units” means all of the issued Units in the Limited Partnership.

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

## 1.2 Interpretation.

This Agreement shall be interpreted in accordance with the following:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) headings are inserted for convenience only and shall not affect the interpretation of this Agreement, any other Loan Document or any provisions hereof or thereof;
- (c) references to dollars, unless otherwise specifically indicated, shall be references to Canadian Dollars;
- (d) the word “including” shall mean “including without limitation” and “includes” shall mean “includes without limitation”;
- (e) the expressions “the aggregate”, “the total”, “the sum” and expressions of similar meaning shall mean “the aggregate (or total or sum) without duplication”;
- (f) in the computation of periods of time, unless otherwise expressly provided, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”;
- (g) accounting terms not specifically defined shall be construed in accordance with GAAP. Except as otherwise mandated by changes in GAAP from time to time, the financial statements required to be delivered pursuant to this Agreement shall

be prepared, and all calculations made for the purposes of this Agreement shall be made, unless otherwise provided for herein, by the application of GAAP applied on a basis consistent with the most recent audited financial statements of TPC, previously delivered to Hydro; and

- (h) for the purposes of this Agreement, a Person (the “**first Person**”) shall be deemed to be “**Controlled**” by another Person or Persons if the Capital Stock of the first Person directly or indirectly held by or for the benefit of the other Person or Persons, acting in concert, other than by way of security only, is either:
  - (i) more than 50% of the Capital Stock of the first Person outstanding at the time of such determination; or
  - (ii) sufficient to permit the other Person or Persons to replace or elect the majority of the board of directors of the first Person,

and “**Controlled**” and “**Controlling**” shall have the corresponding meaning.

### **1.3 Interpretation of other Loan Documents.**

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

### **1.4 Severability.**

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

**1.5 Entire Agreement.**

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

**1.6 Waiver.**

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

**1.7 Governing Law.**

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

**1.8 Incorporation of Schedules.**

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

Schedule A  
Schedule B  
Schedule C

Repayment Notice  
Borrowing Notice  
Material Agreements

Schedule D	Issued and Outstanding Capital Stock and Debt
Schedule E	Liabilities
Schedule F	Address for Notice
Schedule G	List of Security Documents
Schedule H	Authorizations

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

**1.9**            **Conflicts.**

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

**ARTICLE II**  
**DIVIDEND CREDIT FACILITY**

**2.1**            **Dividend Credit Facility.**

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



**2.2 Commitment and Dividend Credit Facility Limit.**

- (1) Hydro shall not be obliged to make any Dividend Credit Advance or Dividend Credit Advances which would cause the Total Outstandings to be greater than the Dividend Credit Facility Commitment, and commencing on the day after the twenty-fifth Anniversary Date, Hydro shall in addition not be obliged to make any Dividend Credit Advance or Dividend Credit Advances which would cause the Total Outstandings, including accrued and unpaid interest and all other amounts owing under the Dividend Credit Facility, to be greater than the Dividend Credit Facility Commitment Cap, provided that where each of NCN and TPC is otherwise in good standing under the Loan Documents, Hydro shall advance in accordance with the provisions of this Agreement, as a Dividend Credit Advance to NCN, upon request, the lesser of: (i) the amount requested by NCN; (ii) the amount hereunder which would, when advanced, cause the Total Outstandings to equal, but not exceed, the Dividend Credit Facility Commitment; and (iii) if the Advance is requested after the twenty-fifth Anniversary Date, the amount hereunder which would, when advanced, cause the Total Outstandings, including accrued and unpaid interest and all other amounts owing under the Dividend Credit Facility, to equal, but not exceed, the Dividend Credit Facility Commitment Cap.
- (2) The Dividend Credit Facility may be utilized by NCN commencing as of the first Anniversary Date subject to the terms and conditions of this Agreement. The Dividend Credit Advance, if any, available at the end of each Anniversary Date, in accordance with the provisions of this Agreement, must be requested within a time period not greater than 220 days after the applicable Anniversary Date but not less than 130 days after the applicable Anniversary Date.

- (3) The Dividend Credit Facility is a non-revolving credit and the principal amount of any Dividend Credit Advance that is repaid may not be re-borrowed and shall be a permanent reduction of the Dividend Credit Facility Commitment.
- (4) Any available amount under the Dividend Credit Facility that NCN does not request a Dividend Credit Advance for by the date set out in Section 2.2(2) shall be a permanent reduction of the Dividend Credit Facility Commitment.

**2.3 Available Dividend Credit Advances.**

- (1) Hydro shall, on the terms and conditions of this Agreement, make the Dividend Credit Advances available to NCN under the Dividend Credit Facility in accordance with Section 3.2.
- (2) All Dividend Credit Advances requested hereunder shall be made available to NCN in accordance with Article III.

**2.4 Repayment on the Maturity Date.**

The Total Outstandings, if any, and all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility shall become due and payable on the Maturity Date and subject to Hydro making an early demand for payment pursuant to Section 8.1 following an Event of Default, NCN shall repay on the Maturity Date, the Total Outstandings, if any, all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility. Notwithstanding the foregoing, if on the Maturity Date, NCN and TPC are not in default in respect of any material provision of the Loan Documents, the amount of the Total Outstandings and all accrued and unpaid interest thereon on the Maturity Date and all other amounts owing to Hydro under the Dividend Credit Facility will, subject to the right to prepay in accordance with the provisions of this Agreement, be repaid to Hydro solely through Hydro receiving all Distributions from time to time on TPC's Units. The Distributions on TPC's Units shall be applied as follows: first, in payment of all costs and

expenses owing to Hydro in connection with the Dividend Credit Facility; second, in payment of all accrued and unpaid interest under the Dividend Credit Facility; and third, in repayment of all principal amounts under the Dividend Credit Facility. Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro, as provided for under the Security Documents, until the Total Outstandings and all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility have been repaid in full out of the said Distributions; provided however, that the payments to be made to Hydro pursuant to this Section 2.4 out of the Distributions on TPC's Units, shall be paid in the order of priority as set out in Section 3.7 of the TPC Financing Agreement, and for so long as Distributions are paid to Hydro pursuant to the TPC Financing Agreement or the Revenue Advance Consolidation Agreement, the non-payment of such Distributions to Hydro pursuant to the provisions of this Agreement shall not be deemed to be a default by TPC under this Agreement.

It is acknowledged that Hydro shall have no right to sue NCN on the personal covenant to pay the said amounts, nor to sue TPC on any personal covenant to pay the said amounts under the Guarantee; it being acknowledged that Hydro's sole recourse for payment shall be to the Collateral in accordance with the provisions of the Security Documents.

**2.5 Mandatory Repayments during the Term of this Agreement.**

- (1) If, on any day, Hydro notifies NCN that the Total Outstandings exceeds the Dividend Credit Facility Commitment, (and commencing on the day after the twenty-fifth Anniversary Date, the Total Outstandings exceeds the lesser of the Dividend Credit Facility Commitment or the Dividend Credit Facility Commitment Cap) (such excess being referred to herein as the "**Over-Drawn Amount**"), NCN shall repay to Hydro, an amount sufficient to reduce the Total Outstandings by at least the Over-Drawn Amount. Notwithstanding the foregoing, provided that NCN and TPC are not in default in respect of any material provision

of the Loan Documents, and subject always to the right to prepay as set out herein, the Over-Drawn Amount and all accrued and unpaid interest thereon and applicable costs and expenses, if any, will be repaid solely through the Distributions from time to time on TPC's Units pursuant to the provisions of the Security Documents. The Distributions on TPC's Units shall be applied as follows: first, in payment of all costs and expenses owing to Hydro in connection with the Dividend Credit Facility; second, in payment of all accrued and unpaid interest under the Dividend Credit Facility; and third, in repayment of all principal amounts under the Dividend Credit Facility. Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro as provided for in the Security Documents until the Over-Drawn Amount and all costs and expenses and accrued and unpaid interest thereon has been repaid in full. The payments made to Hydro pursuant to this Section 2.5(1) out of the Distributions on TPC's Units shall be paid in the order of priority as set out in Section 3.7 of the TPC Financing Agreement and for so long as Distributions are paid to Hydro pursuant to the TPC Financing Agreement in compliance with such priority provisions, the non-payment of such Distributions to Hydro pursuant to the provisions of this Agreement shall not be deemed to be a default by TPC under this Agreement.

- (2) In addition to all other mandatory repayment obligations provided for in this Agreement and subject always to the right to prepay in accordance with the provisions of this Agreement, NCN shall throughout the term of this Agreement repay to Hydro the Total Outstandings plus all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility solely through Hydro receiving all Distributions on TPC's Units. Distributions on TPC's Units shall be applied as follows: first, in payment of all costs and expenses owing to Hydro in connection with the Dividend Credit Facility (except

to the extent that they are dealt with under subsection (1) above); second, in payment of all accrued and unpaid interest under the Dividend Credit Facility (except to the extent that they are dealt with under subsection (1) above); and third, in repayment of all principal amounts under the Dividend Credit Facility (except to the extent that they are dealt with under subsection (1) above). Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro as provided for under the Security Documents until all such amounts have been repaid in full. The amount of any repayment shall be a permanent reduction of the Dividend Credit Facility Commitment. The payments to be made to Hydro pursuant to this Section 2.5(2) out of Distributions on TPC's Units shall be paid in the order of priority as set out in Section 3.7 of the TPC Financing Agreement and for so long as Distributions are paid to Hydro pursuant to the TPC Financing Agreement or the Revenue Advance Consolidation Agreement in compliance with such priority provisions, the non-payment of such Distributions to Hydro pursuant to the provisions of this Agreement shall not be deemed to be a default by TPC under this Agreement.

- (3) It is acknowledged that Hydro shall have no right to sue NCN on the personal covenant to pay the said amounts, nor to sue TPC on any personal covenant to pay the said amounts under the Guarantee, it being acknowledged that Hydro's sole recourse for payment shall be to the Collateral in accordance with the provisions of the Security Documents.

**2.6 Optional Reductions.**

- (1) Subject to Section 2.6(2), NCN may prepay, in whole or in part, the Total Outstandings, at any time, upon at least two (2) Business Days notice to Hydro (the "**Repayment Notice**"). Each Repayment Notice shall be in substantially the form of Schedule "A" and shall specify:

- (a) the proposed date of such prepayment or reduction; and
  - (b) the aggregate principal amount of the prepayment or reduction, and, if such Repayment Notice is given, NCN shall:
  - (c) pay Hydro in accordance with such Repayment Notice the amount of prepayment; and
  - (d) pay Hydro all interest on the amount of such prepayment or excess amount accrued to the date of such prepayment.
- (2) Each partial prepayment of Total Outstandings shall be in a minimum aggregate principal amount of \$200,000 and in an integral multiple of \$100,000.

**2.7 Evidence of Debt and Determination of Interest Rates and Fees.**

- (1) The indebtedness of NCN in respect of all Dividend Credit Advances hereunder shall be evidenced by the account records maintained by Hydro, which shall be *prima facie* evidence of such indebtedness for all purposes, absent error. Hydro shall indemnify and save harmless NCN for losses suffered or costs incurred by NCN due to Hydro's failure to correctly record or calculate any amount, rate, date or other data (including calculations by Hydro to determine any amount) in the account records or in statements or notices issued to NCN, where such failure was due to the gross negligence or willful misconduct of Hydro or any person for whom Hydro is responsible at law. Notwithstanding the foregoing, the failure of Hydro to correctly record or calculate any amount, rate, date or other data (including calculations to determine any amount) in the account records, or in statements or notices issued to the Limited Partnership hereunder shall not affect the obligation of NCN and TPC to pay amounts due hereunder to Hydro in the manner contemplated herein, and in accordance with the other Loan Documents.

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

- (vi) any costs charged by Hydro to NCN during the month, and any reimbursements made by or on behalf of NCN to Hydro during the month for costs charged by Hydro to NCN.

**ARTICLE III**  
**DIVIDEND CREDIT ADVANCES**

**3.1 Dividend Credit Advances.**

Hydro agrees, on the terms and conditions of this Agreement, to make Dividend Credit Advances to NCN under the Dividend Credit Facility, from time to time, on any Business Day.

**3.2 Procedure for Borrowing.**

Where NCN wishes to receive a Dividend Credit Advance under the Dividend Credit Facility, a notice (a “**Borrowing Notice**”) shall be given by NCN to Hydro not later than 10:00 a.m. (Winnipeg time), at least two (2) Business Days but not more than five (5) Business Days prior to the date of the proposed Dividend Credit Advance, which Borrowing Notice shall be irrevocable and binding on NCN. Each Borrowing Notice shall be in substantially the form of Schedule B and shall specify:

- (a) the requested date of the Dividend Credit Advance; and
- (b) the aggregate amount of the Dividend Credit Advance.

Subject to the terms and conditions of this Agreement, Hydro shall forward the funds for the Dividend Credit Advance on the specified date for such Dividend Credit Advance in accordance with the Borrowing Notice forwarded to Hydro.



**3.3 Interest on Dividend Credit Advances.**

Each Dividend Credit Advance, or the amount thereof remaining outstanding from time to time, shall bear interest at the rate applicable to the Dividend Credit Advance determined in accordance with this Section 3.3 from the date such Dividend Credit Advance is first received in the account specified by NCN in the applicable Borrowing Notice to the date on which such Dividend Credit Advance is repaid in full or as otherwise specified in this Agreement. Each Dividend Credit Advance shall bear interest at a rate per annum equal at all times for that Dividend Credit Advance to the Canadian Ten Year Rate in effect on the date the said Dividend Credit Advance is first received in the account specified by NCN in the applicable Borrowing Notice, plus three (3%) percent per annum. Such interest shall be calculated and compounded semi-annually and shall only become due and payable on the Maturity Date subject to the provisions of this Agreement (including payments made through Distributions under Article II and subject to NCN's optional right of prepayment hereunder and except as otherwise stipulated in this Agreement if an Event of Default occurs). Hydro shall provide NCN with notice of the Canadian Ten Year Rate applicable to each such Dividend Credit Advance, together with its supporting calculation of the Canadian Ten Year Rate which will constitute, in the absence of error, *prima facie* evidence of the Canadian Ten Year Rate applicable to each such Dividend Credit Advance and all other amounts owing to Hydro under the Dividend Credit Facility.

**3.4 TPC Financing Agreement.**

Notwithstanding any other provision of this Agreement, it is acknowledged and agreed by the parties hereto that in the event that TPC sells all of TPC's Units to Hydro, whether pursuant to any Sale (as that term is defined in the TPC Financing Agreement), or otherwise, the Total Outstandings under the Dividend Credit Facility, all costs hereunder and all other amounts whatsoever owed by NCN to Hydro under this Agreement or any Loan Documents pursuant hereto (including the Guarantee) shall be deemed to have been paid in full and satisfied by the

sale of TPC's Units to Hydro. NCN's right to receive Dividend Credit Advances will be suspended when Hydro receives notice that TPC is exercising its right to sell all of TPC's Units pursuant to the provisions of the TPC Financing Agreement or upon Hydro providing notice to TPC that it is exercising its right to purchase all of TPC's Units pursuant to the provisions of the TPC Financing Agreement. The Dividend Credit Facility will terminate on the date that the sale of TPC's Units is completed in accordance with the provisions of the TPC Financing Agreement.

#### ARTICLE IV CONDITIONS OF LENDING

##### 4.1 **Conditions Precedent to Initial Dividend Credit Advance.**

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

- (1) **Deliveries.** Hydro shall have received, at or prior to the Initial Closing Date, the following, each dated such day as is satisfactory to Hydro:
  - (a) certified copies of:
    - (i) Council Resolution of NCN approving the entering into of this Agreement and the other Loan Documents to which it is a party and the completion of all transactions contemplated hereunder and thereunder;
    - (ii) the constating documents and by-laws of TPC; and
    - (iii) resolutions of the board of directors of TPC approving the entering into this Agreement and the other Loan Documents to which it is a party and the completion of all transactions contemplated hereunder and thereunder;

- (b) certificate of the Chief of NCN setting forth the name and title of the Chief of NCN and each Councillor of NCN and certifying the names and true signatures of the persons authorized to sign this Agreement and the other Loan Documents to which NCN is a party on behalf of NCN;
- (c) certificate of an officer of TPC certifying the names and true signatures of the persons authorized to sign this Agreement and the other Loan Documents to which TPC is a party on behalf of TPC;
- (d) certificate of status with respect to TPC;
- (e) the Guarantee, in form and substance satisfactory to Hydro, acting reasonably, duly executed and delivered by TPC;
- (f) the Security Documents creating a first charge security interest in TPC's Units and the Distributions on TPC's Units and all rights related to TPC's Units and the said Distributions, in form and substance satisfactory to Hydro, acting reasonably;
- (g) original certificate(s) for TPC's Units, together with duly executed power of attorney in respect of TPC's Units (to be held by Hydro pursuant to the terms of the Security Documents), together with an irrevocable direction from TPC, directing and authorizing the General Partner that all certificates for any TPC's Units issued subsequent to Initial Closing, shall not be forwarded to TPC but shall immediately be forwarded directly to Hydro (to be held by Hydro pursuant to the terms of the Security Documents). All original certificates shall be returned to TPC after the Dividend Credit Facilities under this Agreement have been terminated and the Credit Facilities (as that term is defined in the TPC Financing Agreement) have been terminated and there are no outstanding Obligations under this Agreement or under the TPC Financing Agreement (as defined in that Agreement);

- (h) evidence of the registration of the Security Documents in all offices where such registration, filing or recording is necessary or desirable to protect any rights or remedies of Hydro thereunder and receipt of legal opinions of registration counsel in form and substance acceptable to Hydro, provided however that Hydro shall use its commercially reasonable efforts to complete all such registrations and to obtain the required evidence and opinions from its legal counsel in advance of the Initial Closing Date;
  - (i) legal opinions of counsel to NCN confirming the due authorization, execution, and delivery of this Agreement and the other Loan Documents to which NCN is a party only, subject to customary qualifications and assumptions for such opinions given in respect of a First Nation (but, for greater certainty, no opinions as to enforceability will be required from legal counsel to NCN);
  - (j) legal opinions of counsel to TPC confirming the due authorization, execution and delivery of this Agreement and the other Loan Documents to which TPC is a party only, subject to customary qualifications and assumptions for such opinions (but, for greater certainty, no opinions as to enforceability will be required from legal counsel to TPC);
  - (k) a copy of each Material Agreement, which shall be in form and substance acceptable to Hydro, in its discretion acting reasonably;
  - (l) duly completed Schedules C, D and E to this Agreement in form and substance satisfactory to Hydro, acting reasonably; and
  - (m) such other certificates and documentation as Hydro may reasonably request to give effect to this Agreement.
- (2) **No Material Adverse Business Effect.** No event, condition or circumstance has arisen which would have a Material Adverse Business Effect.

- (3) **Due Diligence.** Hydro shall have completed its due diligence in respect of NCN, TPC and the Material Agreements and shall be satisfied with the results of such due diligence, in its sole discretion.
- (4) **Authorizations.** Hydro has received all Authorizations that it requires for the due performance of the Loan Documents (which Authorizations are specified in Schedule H) with the sole exception that Hydro will require additional borrowing authority from Manitoba under applicable legislation for amounts to be borrowed by Hydro after August 31, 2006, to fund Advances requisitioned by NCN by Borrowing Notices thereafter (the “**Additional Borrowing Authorizations**”). Hydro covenants and agrees to use its best efforts to obtain such Additional Borrowing Authorizations as may be required by it from time to time for the due and timely performance of its covenants under the Loan Documents.
- (5) **PDA.** All of the conditions set forth in Article XIII of the PDA have been fulfilled or performed.
- (6) **Other Conditions.** The conditions set forth in Section 4.2 shall have been fulfilled or performed.

**4.2 Additional Conditions Precedent to Initial Dividend Credit Advance.**

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

- (1) **PDA.** All of NCN’s and TPC’s obligations to be performed or fulfilled on or before the Final Closing Date pursuant to the provisions of the PDA have been fulfilled or performed and NCN and TPC are in compliance with all of the provisions of the PDA.

- (2) **TPC Financing Agreement.** All of TPC's obligations to be performed or fulfilled on or before the Final Closing Date pursuant to the provisions of the TPC Financing Agreement have been fulfilled or performed and TPC is in compliance with all provisions of the TPC Financing Agreement.
- (3) **Limited Partnership.** TPC is a limited partner of the Limited Partnership.

**4.3 Conditions of All Dividend Credit Advances.**

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

- (1) **Facility Limits.** The Total Outstandings shall not:
  - (a) prior to or after giving effect to the Dividend Credit Advance, exceed the Dividend Credit Facility Commitment; provided however that where a Dividend Credit Advance requested by NCN would cause the Total Outstandings to exceed the Dividend Credit Facility Commitment, Hydro shall make a Dividend Credit Advance equal to the amount that shall cause the Total Outstandings to equal, but not exceed, the Dividend Credit Facility Commitment; and
  - (b) commencing on the day after the twenty-fifth Anniversary Date, the Total Outstandings and all accrued and unpaid interest, costs and expenses and all other amounts owing under the Dividend Credit Facility shall not, after giving effect to the Dividend Credit Facility Advance, exceed the Dividend Credit Facility Commitment Cap; provided however, that where a Dividend Credit Advance requested by NCN would cause the Total Outstandings and all accrued and unpaid interest, costs and expenses and all other amounts owing under the Dividend Credit Facility to exceed the Dividend Credit Facility Commitment Cap, Hydro

shall make a Dividend Credit Advance equal to the amount that shall cause the Total Outstandings and all accrued and unpaid interest, costs and expenses and all other amounts owing under the Dividend Credit Facility, to equal, but not exceed, the Dividend Credit Facility Commitment Cap.

- (2) **Truth of Representations and Warranties.** The representations and warranties of NCN and TPC contained in this Agreement and in any other Loan Documents to which each is a party, shall be true and correct as of the date on which any Dividend Credit Advance is made with the same force and effect as if such representations and warranties had been made on and as of such date; provided that, to the extent the disclosure in the representations and warranties is no longer true and correct, NCN and TPC shall be entitled to update such disclosure to Hydro, and if such disclosure is not materially adverse it must be approved by Hydro.
- (3) **Performance of Covenants.** NCN and TPC shall have fulfilled or complied with all covenants herein contained (or contained in any other Loan Documents to which each is a party) to be performed by it at or prior to the date of such Dividend Credit Advance.
- (4) **No Event of Default.** No Event of Default shall have occurred and be continuing.
- (5) **Authorizations.** Hydro has obtained such borrowing authority (including the Additional Borrowing Authorizations) as may be required by it from time to time for the due and timely performance of its covenants under the Loan Documents, including in order to enable it to make the Advances requisitioned from time to time by NCN by Borrowing Notices.

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

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties.**

To induce Hydro to make Dividend Credit Advances available hereunder, NCN and TPC represent and warrant to Hydro that each of the following representations and warranties is true and correct:

- (1) **Status and Power.**
  - (a) NCN is a “band” within the meaning of the Indian Act (Canada) and has the power to own or lease its personal property and its real property, other than the Reserve;
  - (b) TPC is a corporation duly incorporated and organized and validly subsisting under the laws of Manitoba and has full corporate power and capacity to own its property and carry on its Business. TPC is duly qualified, licenced or registered to carry on business in Manitoba.
- (2) **Authorization.**
  - (a) NCN has full power and capacity and full legal right to enter into and perform its obligation under this Agreement and the other Loan Documents to which it is or



will be a party and has, or will have by the Initial Closing Date, taken all action necessary to be taken by it to authorize such acts;

- (b) TPC has full power and capacity and full legal right to enter into and perform its obligations under this Agreement and the other Loan Documents to which it is or will be a party and has or will have by the Initial Closing Date taken all action necessary to be taken by it to authorize such acts.

(3) **Enforceability of Agreement.**

- (a) This Agreement and each other Loan Document to which NCN is a party constitutes legal, valid and binding obligations of NCN enforceable against it in accordance with their respective terms except as enforcement may be limited by the provisions of the Indian Act (Canada) and subject only to any limitation under applicable Laws relating to:
  - (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and
  - (ii) the discretion that a court may exercise in the granting of equitable remedies;
- (b) this Agreement and each other Loan Document to which TPC is a party constitutes legal, valid and binding obligations of TPC enforceable against it in accordance with their respective terms, subject only to any limitation or applicable laws relating to:
  - (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and

- (ii) the discretion that a court may exercise in the granting of equitable remedies.
  
- (4) **Government Approval and Regulation.** No authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or other Person (other than those that have been, or by the Initial Closing Date will be, duly obtained or made) is required for the due execution, delivery or performance by NCN or TPC of any Loan Document to which NCN or TPC is a party.
  
- (5) **Litigation.** There is no material action, suit or proceeding which has been commenced (Notice of which has been served on NCN or TPC), or to the best of the knowledge of NCN or TPC, is pending or threatened against NCN or TPC before or by any Governmental Entity, or before any arbitrator or board, which would prevent NCN or TPC from performing its obligations under any of the Loan Documents to which it is a party. NCN and TPC are not in default with respect to any judgment, order, writ, injunction, decree or award of any court, arbitrator, board or other Governmental Entity, nor is there any judgment, order, writ, injunction, decree or award which would prevent NCN or TPC from performing its obligations under any of the Loan Documents to which either is a party.
  
- (6) **Imposition of Lien.** The consummation of the transactions hereby contemplated and the compliance with the terms, conditions and provisions of this Agreement and each of the other Loan Documents to which it is a party by NCN will not result in or require the creation or imposition of any Lien on any Property of NCN except as otherwise permitted by this Agreement or the Loan Documents. The consummation of the transactions hereby contemplated and the compliance with the terms, conditions and provisions of this Agreement and each of the other Loan Documents to which it is a party by TPC will not result in or require the creation

or imposition of any Lien on the Property of TPC except as otherwise permitted by this Agreement or the Loan Documents.

(7) **No Other Material Facts.** None of:

- (a) this Agreement;
- (b) any of the other Loan Documents; or
- (c) any certificate or statement in writing which has been supplied by or on behalf of NCN or TPC and is a document that is required to be delivered to Hydro pursuant to the provisions of this Agreement or any of the other Loan Documents;

contains any untrue statement of a material fact, or omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading.

(8) **Restrictive Documents.**

- (a) NCN is not subject to, nor a party to any by-laws or resolutions of Chief and Council or of Members (or of any committees thereof, respectively), of NCN any Notice, any Law, any Claim, any contract or instrument, any Lien, or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement and each of the other Loan Documents to which it is a party or compliance by NCN with the terms, conditions and provisions hereof or thereof;
- (b) TPC is not subject to or a party to, any restriction in its constating documents or by-laws, any Notice, any Law, any Claim, any contract or instrument, any Lien, or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement and each of

the other Loan Documents to which it is a party or compliance by TPC with the terms, conditions and provisions hereof or thereof or the continuing operation of the Business.

- (9) **Title to Collateral.** TPC is the registered owner and sole beneficial owner of and has good and marketable beneficial title to and is lawfully possessed of its Property free and clear of all Liens, except Permitted Liens. A complete and accurate listing of its Property has been provided to Hydro, including the Collateral, and TPC has full right to mortgage, pledge, charge and assign to Hydro the Collateral. No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding or commitment, for the purchase from NCN or TPC of the Collateral other than Hydro.
- (10) **Compliance with Laws.** Each of NCN and TPC is in material compliance with all applicable Laws.
- (11) **No Breach of Contracts.** Schedule C, which will be completed and provided by NCN to Hydro on or before the Initial Closing Date, will contain a complete and accurate list of all agreements to which:
- (a) NCN and/or TPC is a party in connection with the Corporate Distributions of TPC, the Capital Stock of TPC, the equity interest that NCN has in TPC, TPC's Units and Distributions on TPC's Units;
  - (b) NCN is a party in connection with or arising out of the Wuskwatim Project creating liabilities or obligations upon any Person over the term of the agreement in excess of \$75,000; and
  - (c) TPC is a party creating liabilities or obligations upon any Person over the term of the agreements in excess of \$75,000 or is otherwise material to TPC (collectively,

the “**Material Agreements**”). NCN and TPC have provided, or will, on or before the Initial Closing Date provide, copies of all Material Agreements, including amendments or additions thereto, to Hydro. On the date of the execution of each Future Material Agreement (as defined below in Section 6.1(11)), Schedule C shall be deemed to be amended to include such Future Material Agreements and such Future Material Agreements shall be deemed to be Material Agreements for the purposes of this Agreement from and after the date of execution without the necessity of any further action by any of the parties hereto. Each Material Agreement is, or will on or before the Initial Closing Date be, in full force and effect, unamended (except as disclosed to Hydro), and there exists no default or event, occurrence, condition or act (including the completion of the transactions contemplated under this Agreement and any other Loan Document) which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become a default thereunder. Neither NCN nor TPC have violated or breached, in any respect, any of the terms or conditions of any Material Agreement and, to the best of the knowledge of NCN and TPC, all the material covenants to be performed by any other party thereto have been fully performed in all material respects.

- (12) **Books and Records.** All books and records of TPC have been fully, properly and accurately kept and completed in accordance with GAAP and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.
- (13) **Tax Liability.** Except for any Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books:

- (a) TPC has in a timely manner filed all tax returns, elections, filings and reports with respect to Taxes required by Law to be filed by it and such returns, elections, filings and reports are true, complete and correct;
  - (b) TPC has paid, or reserved in its financial statements, all Taxes which are due and payable, and has paid all assessments and reassessments and all other Taxes, governmental charges penalties, interest and fines due and payable by it;
  - (c) TPC has no liability, contingent or otherwise, for Taxes, except Taxes not now due and payable with respect to ordinary operations during the current fiscal period adequate provision for the payment of which has been made; and
  - (d) TPC has paid as and when due all applicable Taxes and remitted as required by Law all applicable Taxes and deductions and any interest or penalties related thereto.
- (14) **Shareholder.** NCN is the beneficial owner of all of the Capital Stock of TPC free and clear of all Liens except Permitted Liens. The Capital Stock of TPC is owned by the Chief or a Councillor of NCN, as bare trustee for NCN. No Person has any written or oral agreement, option, understanding or commitment, or any right capable of becoming an agreement, option, understanding, commitment, or right for purchase of any of the Capital Stock of TPC or to receive payment based on the value of any such Capital Stock. The issued and outstanding Capital Stock and Debt (excluding Debt under this Agreement) of TPC and the registered beneficial holders of such Capital Stock and Debt (excluding Debt under this Agreement) will be as described in Schedule D, which will be completed and provided by NCN to Hydro on or before the Initial Closing Date. Hydro acknowledges that the NCN Deed of Assignment shall not be deemed to be a breach of this representation.

- (15) **Liabilities.** TPC does not have any liabilities, whether accrued, absolute, contingent or otherwise, of any kind or nature whatsoever, except as otherwise disclosed in Schedule E, which will be completed and provided by NCN to Hydro on or before the Initial Closing Date or pursuant to the Loan Documents, and except as incurred after the date hereof in compliance with this Agreement and the Loan Documents.
- (16) **No Event of Default.** No Event of Default has occurred, nor has any event or condition occurred which, with the giving of Notice or passage of time, or both, would constitute an Event of Default under the Loan Documents. No default has occurred nor has any event or condition occurred which, with the giving of Notice or passage of time, or both, would constitute a default under any one or more of the Material Agreements which could result in the acceleration of amounts owing by NCN or TPC under any such Material Agreements.
- (17) **Financial Information.** The financial statements of TPC furnished to Hydro pursuant to this Agreement have been prepared in accordance with GAAP, consistently applied, and present fairly the financial position of TPC as at the dates thereof and the results of their operations for the periods then ended. All balance sheets, all statements of operations, shareholders' equity and cash flow and all other financial information of TPC furnished pursuant to Section 6.1(1) have been and will for periods following the Initial Closing be prepared in accordance with GAAP consistently applied, and do or will present fairly the consolidated financial position of TPC thereby as at the dates thereof and the results of their operations for the periods then ended.

Each of the representations and warranties contained in this Section 5.1 shall be deemed to be continually repeated by NCN and TPC at the time of each Dividend Credit Advance.

**5.2 Survival of Representations and Warranties.**

All the representations and warranties of NCN and TPC contained in Section 5.1 shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts owing hereunder have been repaid and the Dividend Credit Facility has been terminated notwithstanding any investigation made at any time by or on behalf of Hydro.

**5.3 Representations by Hydro.**

To induce NCN and TPC to enter into this Agreement, Hydro represents and warrants to NCN and TPC that each of the following representations and warranties is true and correct:

- (1) Hydro is a corporation duly incorporated and organized and validly subsisting under the Laws of Manitoba and has the corporate power and authority to own or lease its property and to enter into this Agreement and each of the other Loan Documents to which it is a party and to perform its obligations hereunder and thereunder.
- (2) This Agreement and the Loan Documents to which Hydro is a party have been duly authorized, executed and delivered by Hydro and are legal, valid and binding obligations of Hydro enforceable, against Hydro by NCN and TPC to the extent that NCN or TPC is a party thereto, in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction or, by this Agreement, at the discretion of the Arbitrator.
- (3) Subject only to obtaining the Authorizations described in Schedule H, the execution and delivery of this Agreement and each of the Loan Documents to



which Hydro is a party and the consummation the transactions herein provided for by Hydro will not result in:

- (a) the breach or violation of any other provisions of or constitute a default under or conflict with or cause the acceleration of any obligation of Hydro under:
  - (i) any contract to which Hydro is a party or by which it, or any of its property, is bound;
  - (ii) any provision of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) of Hydro;
  - (iii) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over Hydro; or
  - (iv) any applicable law, statute, ordinance, regulation or rule, including, without limitation, the *Hydro Act*; or
- (b) the creation or imposition of any Lien on any investment transaction or any of the property or assets of Hydro.
- (4) Hydro is a resident of Canada for the purposes of the Income Tax Act (Canada).
- (5) None of:
  - (a) this Agreement;
  - (b) any of the other Loan Documents; or
  - (c) any certificate or statement in writing which has been supplied by or on behalf of Hydro and is a document that is required to be delivered to Hydro pursuant to this Agreement or any of the other Loan Documents,

contains any untrue statement of a material fact, or omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading.

- (6) There is no requirement for Hydro to make any filing with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of any government regulatory authority as a condition to the lawful consummation by Hydro of the transaction contemplated by this Agreement and each other Loan Document to which it is a party, except as described in Schedule H.

Each of the representations and warranties contained in this Section 5.3 shall be deemed to be continually repeated by Hydro at the time of each Dividend Credit Advance.

**5.4 Survival of Representations and Warranties.**

All the representations and warranties of Hydro contained in Section 5.3 shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts owing hereunder have been repaid and the Dividend Credit Facility has been terminated, notwithstanding any investigation made at any time by or on behalf of NCN or TPC.

**ARTICLE VI  
COVENANTS OF NCN AND TPC**

**6.1 Affirmative Covenants.**

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

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

Annual Financial Statements

- (a) as soon as available, and in any event within one hundred and twenty (120) days after the end of each Financial Year, the audited financial statements (including, at a minimum, a balance sheet, income statement and statement of changes in financial position) of TPC for such Financial Year, prepared in accordance with GAAP and subject to an unqualified opinion of the Auditors;

Quarterly Financial Statements

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

- (2) **Additional Reporting and Deliveries.** Cause to be delivered to Hydro, the following documents, in form and substance satisfactory to Hydro acting reasonably:

- (a) a copy of each management letter or report submitted to the board of directors (or any committee thereof) or senior management of TPC by the Auditors in connection with any annual, interim or special audit made by them of the books of TPC, together with the related response of TPC to be delivered promptly upon the issuance of the response by TPC;

- (b) promptly after the occurrence of any Event of Default, a statement of NCN setting forth the details of such Event of Default and the action which NCN and/or TPC propose to take or have taken with respect thereto;
  - (c) promptly after the commencement thereof, Notice of Claims which have been commenced against NCN or TPC (notice of which has been served on NCN or TPC), or to the best of the knowledge of NCN or TPC, are pending or threatened against NCN or TPC for amounts which exceed \$75,000 in the aggregate at any time or affect any of the Collateral;
  - (d) promptly after the occurrence of any material development with respect to any Claims referred to in Section 6.1(2)(c), and in any event within three (3) Business Days after NCN or TPC obtains knowledge of the occurrence thereof, Notice thereof to Hydro, and, to the extent Hydro requests them, copies of all documentation relating thereto; and
  - (e) such other information and reports relating to TPC, the Collateral or the Business or NCN's interest in TPC, as Hydro may from time to time reasonably request.
- (3) **Existence.** Preserve and maintain TPC's corporate existence.
  - (4) **Compliance with Laws.** Comply, in all material respects with the requirements of all applicable Laws.
  - (5) **Payment of Taxes, Claims and Governmental Licence Fees.** Pay and discharge in respect of TPC, before the same shall become delinquent:
    - (a) all Taxes, governmental assessments, charges or levies and Claims imposed upon it or upon any of its Property;

- (b) all lawful Claims which, if unpaid, might by Law become a Lien upon its Property, in each case except for any such Tax, assessment, charge, levy or Claim which would result in a Lien which is a Permitted Lien; and
  - (c) all fees payable to Governmental Entities or other authorities in connection with all governmental licences issued to and held by TPC (if any).
- (6) **Keeping of Books.** Keep or cause to be kept, proper books, records and accounts, in which full and correct entries shall be made of all of TPC's financial transactions in accordance with GAAP.
- (7) **Visitation and Inspection.** If, in the reasonable opinion of Hydro, an Event of Default has or may have occurred, at any reasonable time or times and upon reasonable prior notice given to NCN and TPC by Hydro, permit Hydro or any of its authorized representatives, full and reasonable access to the premises of NCN and TPC and obtain any consents and waivers from any Person necessary, in the reasonable opinion of Hydro to ensure such access, for the purposes of inspecting (and, where required, taking copies of) the respective business, financial and computer records of NCN (but relating to the Wuskwatim Project only) and TPC and to discuss the respective business, financial and computer records of NCN (but relating to the Wuskwatim Project only) and TPC, and compliance by NCN and TPC with the terms of this Agreement and the other Loan Documents (to the extent that each is a party thereto), with the management and Auditors thereof.
- (8) **Protect Hydro Liens.** At all times take all action and supply Hydro with all such information necessary to allow Hydro to create, maintain, perfect, protect and preserve the Liens provided for under the Security Documents and confer upon Hydro the security interest intended to be created thereby.

- (9) **Payments.** Pay all amounts of principal, interest, costs and expenses in the manner, on the dates, at the times and at the places specified in this Agreement or under any other Loan Document, but subject to the provisions of Section 8.2 in respect of costs and expenses.
- (10) **Payment of Preferred Claims.** Pay, as and when due, any and all amounts which may result in a Lien on the Collateral under applicable Law (other than a Permitted Lien) whether or not such Lien is entitled to priority over the Liens in favour of Hydro under the Security Documents.
- (11) **Loan Documents.** Execute and deliver to Hydro the Loan Documents.
- (12) **Material Agreements.** Comply with the provisions of all of the Materials Agreements. In respect of each Material Agreement executed by NCN and/or TPC after the date hereof (each a “**Future Material Agreement**”), provide to Hydro, a certified copy of each Future Material Agreement.
- (13) **Notice of Defaults.** Immediately notify Hydro:
- (a) of any Event of Default or of any event, occurrence, condition or act which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become an Event of Default, or of any material default (either by NCN or TPC) under any Material Agreement or of any event which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become a material default under or would otherwise allow the termination of any Material Agreement, and thereafter provide Hydro with all information reasonably requested by Hydro from time to time concerning the status thereof;
  - (b) on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding, labour or industrial dispute the result of which if determined

adversely would have a Material Adverse Business Effect on the ability of NCN and/or TPC to perform their respective obligations under this Agreement and the other Loan Documents and thereafter provide Hydro with all information reasonably requested by Hydro concerning the status thereof.

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

## 6.2 Negative Covenants.

So long as any amount owing under the Loan Documents remains unpaid or Hydro has any Dividend Credit Facility Commitment under this Agreement and unless Hydro, as the case may be, shall otherwise consent, NCN and TPC agree that:

- (1) **Business Activity.** TPC shall not engage in any business activity except the Business.
- (2) **Liens.** No Liens shall be created, incurred, assumed or suffered to exist, on any of TPC's Property including the Collateral and the Capital Stock of TPC other than Permitted Liens. For greater certainty this does not prohibit the NCN Deed of Assignment.
- (3) **Disposal of Property.** None of the Collateral shall be disposed of by TPC.
- (4) **Debt.** Except with the prior consent of Hydro, TPC shall not allow any Debt of TPC to be created, incurred, assumed or suffered to exist, directly, or contingently or otherwise, other than:

- (a) Debt to Hydro;
  - (b) unsecured current liabilities incurred and payable in the ordinary course of the Business and not represented by any note, bond or debenture; or
  - (c) Purchase Money Debt, provided that the payments under such Purchase Money Debt does not exceed an aggregate amount in any one year period of \$15,000.
- (5) **Mergers.** TPC shall not reorganize, amalgamate, merge, consolidate or otherwise enter into any form of business combination with any other Person.
- (6) **Guarantees and Indemnities.** TPC shall not guarantee or indemnify or give financial assistance or incur any contingent liability in respect of any Debt or any other obligations or liabilities of any other Person at any time other than pursuant to the Guarantee.
- (7) **Dividends.** TPC shall not:
- (a) declare or pay any dividends or any distributions after Hydro has provided notice to TPC that an Event of Default has occurred; nor
  - (b) declare or pay any dividends or other distributions, in any other circumstances if, after declaring or paying such dividend or other distribution, TPC would not be able to meet its obligations under the Loan Documents.
- (8) **Financial Year and Auditors.** TPC shall not change its Financial Year end or its Auditors.
- (9) **Change in Constating Documents or Capital Stock.**
- (a) There shall be no change in the constating documents or by-laws of TPC as delivered to Hydro which would:



- (i) amend the authorized shares or other equity securities of TPC; or
  - (ii) otherwise be detrimental to the rights or interests of Hydro under any of the Loan Documents;
- (b) Issue any Capital Stock in TPC that would cause an Event of Default to occur or would cause a Change of Control of TPC.
- (10) **Material Agreements.** There shall be no amendment, supplement, termination or waiver, or entering into of any forbearance from exercising any rights with respect to, any of the terms of any Material Agreement in a manner which would cause a Material Adverse Business Effect or an Event of Default hereunder.
- (11) **Change of Control.** There shall be no Change of Control.
- (12) **Change of Registered Owner.**  
Change the registered owner of the Capital Stock of TPC to any person other than the Chief or a Councillor of NCN, as bare trustee for NCN, or change the form of bare trustee declaration prior to obtaining the written consent of Hydro to the change.

6.3 **Cross-Default.**

Any Event of Default (as defined in the TPC Financing Agreement) by TPC shall be deemed to be an Event of Default hereunder.

**ARTICLE VII**  
**SECURITY**

**7.1**            **Security.**

Each of NCN and TPC shall execute and deliver, the Security Documents to which it is a party with each of the Security Documents to be in form and substance satisfactory to Hydro, acting reasonably, as and when required hereunder or under the Loan Documents as continuing collateral security in the Collateral for the due, prompt and complete payment, performance and satisfaction by TPC of all of NCN's indebtedness, liabilities and obligations of every nature whatsoever (whether present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time due or accruing due, whatsoever and howsoever incurred, including any ultimate unpaid balance thereof, in any currency, and whether incurred prior to, at the time or subsequent to the execution of this Agreement) to Hydro, in connection with this Agreement and the other Loan Documents (collectively the "**Obligations**").

Notwithstanding anything to the contrary herein, this Agreement shall be interpreted in all respects having regard for the fact that, and the Security Documents shall provide that, (a) Hydro has a first charge security interest on TPC's Units and the Distributions on TPC's Units and any interest related to TPC's Units and the said Distributions, and (b) Hydro's sole recourse for payment of the Obligations shall be to the Collateral in accordance with the provisions of this Agreement, and for greater certainty, it shall have no right to sue TPC or NCN on any personal covenant to pay all or any of the Obligations, including without limitation, under the Guarantee.

**7.2**            **Registrations.**

- (1) Hydro, in its sole discretion, may register, file or record the Liens constituted by the Security Documents in all jurisdictions where such registration, filing, or

recording is necessary or of advantage to the creation, perfection, preservation or protection of such Liens.

- (2) Hydro may renew such registrations, filings and recordings from time to time as and when required or of advantage, in the sole discretion of Hydro, to keep them in full force and effect. NCN and TPC acknowledge that the forms of the Security Documents have been prepared based upon the laws of the jurisdictions indicated therein as being applicable thereto in effect at the date hereof and that such Laws may change. NCN and TPC agree that, following prior notice to and consultation with NCN and TPC, upon direction from Hydro, Hydro shall have the right to require that the forms of the Security Documents be amended, restated or supplemented, to reflect any changes in such Laws, whether arising as a result of statutory amendments, court decisions or other similar changes, in order to confer upon Hydro the Liens in the Collateral intended to be created by the Security Documents, in the sole discretion of Hydro. For greater certainty, nothing in this Agreement can be used by Hydro, TPC or NCN or by any other Person to expand or reduce or otherwise change the scope of the Property comprising the Collateral herein defined or to confer upon Hydro a right to sue TPC or NCN on a personal covenant to pay all or any of the Obligations, or to require any guarantees (except the Guarantee), indemnities or covenants from NCN or any other Person in respect of the Obligations or otherwise.

## ARTICLE VIII EVENTS OF DEFAULT

### 8.1 Events of Default.

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

- (a) NCN shall fail to pay any portion of the principal or interest or any fees or other amounts due hereunder or under any of the other Loan Documents on the date when due hereunder or thereunder and such amount remains unpaid for a period of six (6) Business Days after Hydro notifies NCN that the amount is overdue; provided however, that this provision shall be read in conjunction with the provisions in this Agreement, the TPC Financing Agreement and the other Loan Documents hereunder and thereunder which provide that, for so long as TPC and NCN are otherwise in good standing under the provisions of this Agreement, the TPC Financing Agreement and the other Loan Documents hereunder and thereunder, all such payments to Hydro are to be made solely through the irrevocable assignment and direction to Hydro of the Distributions on TPC's Units (or a portion thereof, as applicable under the priority provisions of the TPC Financing Agreement) prior to the Maturity Date (and, in certain circumstances, after the Maturity Date), and from no other source, such that for so long as the Distributions are so assigned by TPC (as collateral security for the Guarantee) and are paid over to Hydro as and when declared by the General Partner of the Limited Partnership pursuant to the irrevocable assignment and direction in favour of Hydro, NCN shall be deemed to be in compliance with its covenants to pay for all purposes hereunder and under the other Loan Documents. The parties hereto acknowledge that neither TPC nor NCN control the timing or amount of such Distributions, and as such, there may be periods of time during which there are no or few Distributions to be paid over to Hydro in accordance with the irrevocable assignment and direction to Hydro, and this shall not be construed to be an Event of Default hereunder;
- (b) any representation or warranty or certification made or deemed to be made by any NCN or TPC or pursuant to or in connection with any of the Loan Documents

delivered to Hydro shall prove to have been incorrect in any material respect when made or deemed to have been made;

- (c) NCN or TPC shall fail to perform or observe any other term, covenant or agreement contained in any of the Loan Documents on its part to be performed or observed and such failure shall remain unremedied for fifteen (15) Business Days (the “**Cure Period**”) after written notice thereof shall have been given to NCN and TPC by Hydro; provided that the length of the Cure Period shall be extended by Hydro in its unfettered discretion where NCN and TPC demonstrate to Hydro that the breach is not capable of being cured within fifteen (15) Business Days but provides Hydro, within fifteen (15) Business Days, with a plan for curing the breach within sixty (60) calendar days and in good faith implements such plan;
- (d) any of the Loan Documents, at any time, is not or ceases to be valid or enforceable in whole or in part, or if any Lien intended to be created by any of the Security Documents is not or ceases to be a valid and perfected Lien having the ranking or priority contemplated thereby, or if the validity or enforceability of any of the Loan Documents or the validity or perfection of any such Lien shall be contested by any party thereto or any other Person (unless such contestation by such party or other Person is being opposed diligently, in good faith and by proper legal proceedings by Hydro with the assistance of NCN and TPC and Hydro covenants to oppose such contestation in good faith, where in its discretion, there is a reasonable prospect of success), or if any Person (other than Hydro or the Limited Partnership) obtains any interest in the Collateral or any part thereof (except Permitted Liens); provided however, that this provision shall only be invoked where Hydro, acting reasonably, has determined that its inability to enforce the said Lien with its intended ranking or priority cannot be cured by Hydro within a reasonable period of time or without Hydro being materially adversely affected notwithstanding that NCN and TPC have provided a written

undertaking to assist Hydro in the manner set out therein to cure the inability of Hydro to enforce the said Lien with its intended ranking or priority;

- (e) with respect to Debt of TPC under any one or more agreements other than the Debt under the Loan Documents,
  - (i) TPC shall fail to pay any principal, interest or other amount pursuant to the agreements governing such other Debt in an aggregate amount in excess of \$75,000 (or the equivalent amount in another currency) when such amount becomes due and payable (whether by scheduled maturity, required repayment, acceleration, demand or otherwise) and such failure shall continue after any applicable grace period specified in such agreement or agreements; or
  - (ii) any other event, condition or circumstance shall occur and shall continue after any applicable grace period specified in such agreement or agreements, if the effect of such event, condition or circumstance is to accelerate the maturity of such other Debt in an aggregate amount in excess of \$75,000 (or the equivalent amount in another currency); or
  - (iii) other Debt of TPC in an aggregate amount in excess of \$75,000 (or the equivalent amount in another currency) shall be declared to be due and payable prior to the stated maturity thereof under any such agreement or agreements;
- (f) the occurrence of any default, or any event or condition which, with the giving of notice or passage of time, or both would constitute a default under any Material Agreement and such default shall continue unremedied after any applicable grace period specified in such Material Agreement;
- (g) NCN or TPC shall:

- (i) become insolvent;
- (ii) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors;
- (iii) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
- (iv) institute or have instituted against it any proceeding seeking (x) to adjudicate it a bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of its Property, and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within forty five (45) days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property) shall occur; provided however, that in the event that a third party manager or co-manager is appointed for NCN, this shall not constitute an Event of Default hereunder provided that the third party manager or co-manager abides by the terms and conditions of this Agreement; or
- (v) take any corporate action to authorize any of the foregoing actions;

- (h) a Notice is sent to NCN or TPC from any creditor with respect to the intention of such creditor to enforce a Lien on:
  - (i) any of the Collateral; or
  - (ii) any Property of TPC (other than the Collateral) unless such Notice is being contested in good faith by appropriate legal proceedings and such Notice has not resulted in, or does not involve, any immediate danger of the sale, forfeiture or loss of any of the Property of TPC that is the subject of such Notice; or
  - (iii) the Capital Stock of TPC;
- (i) any one or more judgments or orders in excess of \$75,000 (or the equivalent in another currency) in the aggregate, or any one or more orders, directives, letters of credit or other communications from any Governmental Entity which may be reasonably likely to require TPC to expend an amount in excess of \$75,000 (or the equivalent amount in another currency) in the aggregate shall be rendered against TPC, and either:
  - (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment(s) or order(s); or
  - (ii) there shall be any period of ten (10) consecutive Business Days during which a stay of enforcement of any such judgment or order, directive, letter or other communication by reason of a pending appeal or otherwise, shall not be in effect;
- (j) the audited financial statements of TPC in respect of any Financial Year are qualified in any material adverse respect by the Auditors;



- (k) the occurrence of a Change of Control;
- (l) the loss, suspension or failure to renew any licence or permit held by TPC or any agreement to which TPC is a party the effect of which would prohibit or otherwise restrict TPC from conducting the Business;
- (m) TPC is enjoined or restrained in any material way by an order of any Governmental Entity, arbitrator or board in Canada or elsewhere from conducting the Business;
- (n) the occurrence of a Material Adverse Business Effect;
- (o) the occurrence an Event of Default committed by TPC (as such term is defined in the TPC Financing Agreement); or
- (p) the occurrence of any event, condition or circumstance which, with the giving of notice or passage of time or both, would constitute an Event of Default, after the expiration of, in the case of a Loan Document, the applicable Cure Period or in the case of any other agreement, the applicable cure period (if any) thereunder;  
  
then, and in any such event, Hydro shall be entitled by written notice to NCN and TPC to:
  - (a) terminate the obligation of Hydro to make further Dividend Credit Advances under the Dividend Credit Facility; and/or
  - (b) demand repayment of the Total Outstandings owed by NCN to Hydro under the Dividend Credit Facility, whereupon the Total Outstandings and other amounts payable thereunder shall become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by NCN and TPC except such notices as may be required under

applicable Laws. Provided, however that Hydro shall only have recourse to the Collateral for repayment of the Obligations and further provided, however, that upon any Event of Default specified in Section 8.1(g), the obligation of Hydro to make Dividend Credit Advances hereunder shall automatically terminate.

**8.2 Expenses of Hydro.**

Upon the occurrence of any Event of Default which has not been waived and is continuing, Hydro may take any action Hydro considers advisable, acting reasonably, to remedy the effect of such Event of Default. All reasonable expenses, costs and charges incurred by or on behalf of Hydro in connection with:

- (a) any remedial action taken pursuant to this Section; or
- (b) the realization of the Collateral, including all reasonable fees, court costs, receiver's or agent's remuneration and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment of the Collateral, in all cases shall be added to and form a part of the Obligations, but subject always to the provisions that Hydro's sole recourse for payment of the Obligations shall be to the Collateral, as set out herein. For greater certainty, for so long as there is no Event of Default hereunder, Section 5.14 of the PDA shall govern the payment of Hydro's costs and expenses properly recoverable hereunder.

**8.3 Remedies Cumulative.**

The remedies provided for in this Agreement and each of the Loan Documents are cumulative and do not exclude any other right or remedy provided by Law (except that there shall be no right of Hydro to sue TPC or NCN on any personal covenant to pay, it being acknowledged that Hydro's sole recourse is to the Collateral).

**8.4           Allocations.**

For greater certainty, the parties agree that any expenses or costs that are, by the terms of this Agreement or under the other Loan Documents, reimbursable to Hydro shall be allocated to the Dividend Credit Facility.

**ARTICLE IX  
PAYMENTS, COMPUTATIONS AND INDEMNITIES**

**9.1           Timing of Payments under this Agreement.**

- (1)           Unless otherwise expressly provided in this Agreement, NCN shall make any payment required to be made by it to Hydro by depositing the amount of such payment in Hydro's Account not later than 11:00 a.m. (Winnipeg time) on the date such payment is due.
  
- (2)           Unless otherwise expressly provided in this Agreement, Hydro shall make any Dividend Credit Advance or other payment to NCN hereunder by crediting or causing the crediting of the account of NCN directed by NCN in the applicable Borrowing Notice with the amount of such Dividend Credit Advance on the date such Dividend Credit Advance is to be made.

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

Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall not be included in the computation of interest unless an Event of Default has occurred and is continuing, in which event such extension of time shall be included in the computation of interest.

**9.3 Overdue Amounts.**

All amounts owed by NCN which are not paid when due (whether at stated maturity, on demand, by acceleration or otherwise) shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times, to the applicable rate specified in Section 3.3.

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

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

- (a) first, in reduction of NCN's obligation to pay any costs or expenses which are due and owing to Hydro, and reimbursable or indemnity amounts or Losses which have been determined by a court of competent jurisdiction or by arbitration to be due and owing to Hydro;
- (b) second, in reduction of NCN's obligation to pay any unpaid interest accrued on the principal amount of Dividend Credit Advances;
- (c) third, in reduction of such NCN's obligation to pay any amounts due and owing on account of the principal amount of all Dividend Credit Advances;
- (d) fourth, to be held in escrow by Hydro in an interest-bearing account on account, and up to the amount, of any written claim by Hydro then issued and outstanding seeking reimbursement or indemnity hereunder for Losses, pending determination by a court of competent jurisdiction or by arbitration as to the amount (if any) which is due and owing to Hydro hereunder (in which event, such funds and any interest earned thereon shall be dealt with in accordance with the order of the court of competent jurisdiction or arbitrator, as the case may be); and

- (e) fifth, to NCN or such other Persons as may lawfully be entitled to the remainder, or as any court of competent jurisdiction may otherwise direct.

**9.5 Computations of Interest and Fees.**

- (1) All computations of interest shall be made by Hydro, based on the semi-annual interest computation (and not the number of days in the six (6) month period) and on the basis of a year of 365 days.
- (2) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the aggregate “interest” (as defined in Section 347 of the *Criminal Code* (Canada), as the same may be amended, replaced or re-enacted from time to time) payable under this Agreement exceed the maximum amount of interest on the “credit advanced” (as defined in that Section) under this Agreement lawfully permitted under that Section and, if any payment, collection or demand pursuant to this Agreement in respect of “interest” (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand shall be refunded to NCN. For purposes of this Agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the relevant Dividend Credit Advance is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of any dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Hydro will be conclusive for the purposes of such determination.
- (3) Each determination by Hydro of any amount payable hereunder by NCN shall be *prima facie* evidence of the amount payable for all purposes absent error.

**9.6 Indemnity for Change in Circumstances.**

- (1) If with respect to Hydro:

- (a) any change in Law, or any change in the interpretation or application by any Governmental Entity of any Law occurring or becoming effective after the date hereof; or
- (b) any compliance by Hydro with any direction or requirement having the force of Law) of any Governmental Entity made or becoming effective after the date hereof,

in either case shall have the effect of causing Loss to Hydro by:

- (i) increasing the actual cost to Hydro of performing its obligations under this Agreement or in respect of any Dividend Advance;
- (ii) reducing any amount otherwise properly payable to Hydro under this Agreement or in respect of any Dividend Advance by any amount that Hydro deems material acting reasonably (other than pursuant to Section 9.5(2));

then Hydro may give notice to NCN specifying the nature of the event giving rise to such Loss and NCN shall, within twenty (20) Business Days of demand, pay such amounts as Hydro may specify is necessary to compensate Hydro for such Loss. A certificate as to the amount of any such Loss, submitted in good faith by Hydro to NCN shall be *prima facie* evidence of the amount of such Loss for all purposes, absent error.

- (2) Except as required by applicable Law, NCN and TPC shall make all payments under this Agreement to Hydro without deducting or withholding of any Taxes. To the extent that deduction or withholding of Taxes is required by applicable Law, NCN and TPC will:

- (a) immediately notify Hydro of such requirement;

- (b) pay to the appropriate authority the full amount required to be so withheld or deducted before penalties attach thereto or interest accrues thereon;
- (c) promptly forward to Hydro an official receipt or other documentation reasonably satisfactory to Hydro evidencing such payment to such authority; and
- (d) pay to Hydro an additional amount so that Hydro receives the full amount it would have received had no such deduction or withholding been required.

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

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

Hydro acknowledges that in respect of this Section 9.6(2), Taxes shall not include any income taxes that may be payable by Hydro. Hydro shall remain solely obligated to pay and shall save TPC and NCN harmless from any income taxes that may be asserted against Hydro or payable by Hydro, including with respect to any payments or amounts received or made under this Agreement.

**9.7 Indemnity.**

- (1) NCN hereby agrees to indemnify, exonerate and hold Hydro and its officers, directors, employees, agents and other representatives (in this Section 9.7(1), the “**Indemnified Parties**”) free and harmless from and against any and all Claims,

demands, actions, causes of action, suits, losses, costs (including all documentary, recording, filing, mortgage duties), charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 9.7(1), the “**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them or, with respect to, or as a direct or indirect result of:

- (i) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Dividend Credit Advances obtained hereunder; or
  - (ii) the execution, delivery, performance or enforcement of this Agreement or any Loan Documents, except for such Indemnified Liabilities that a court of competent jurisdiction determines or rules to be on account of the relevant gross negligence or willful misconduct of the Indemnified Party or any Person for whom such Indemnified Party is responsible at law [in which event, such Party shall indemnify TPC and its officers and directors and NCN and its Chief and Councillors (to the extent that each of NCN’s Chiefs and Councillors is liable at law in his or her respective capacity as part of Chief and Council) for all Indemnified Liabilities paid, incurred or suffered by or asserted against any of them arising out of such gross negligence or willful misconduct].
- (2) All obligations provided for in this Section 9.7 shall not be reduced or impaired by any investigation made by or on behalf of Hydro.
- (3) If, for any reason, the obligations of NCN pursuant to this Section 9.7 shall be unenforceable, NCN agrees to make the maximum contribution to the payment



and satisfaction of each obligation that is permissible under Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or willful misconduct or any Person for whom such Indemnified Party is responsible at law [in such event such Party shall indemnify TPC and its officers and directors and NCN and its Chief and Councillors (to the extent that each of NCN's Chiefs and Councillors is liable at law in his or her respective capacity as part of Chief and Council), for all Indemnified Liabilities paid, incurred or suffered by or asserted against any of them arising out of such gross negligence or willful misconduct].

**9.8 Contribution.**

If any provision in any of the Loan Documents providing for indemnification by NCN (the “**Indemnitor**”) in favour of Hydro or any of the Indemnified Parties (as defined in Section 9.7) (the “**Indemnitee**”) is found by reason of the occurrence of an event, other than the gross negligence or wilful misconduct of the Indemnitee, to be unenforceable by a court of competent jurisdiction in a final judgment that has become non-appealable, then the Indemnitor shall contribute to the amount paid or payable by the Indemnitee which is subject to the indemnification provision in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor on the one hand and the Indemnitee on the other hand but also the relative fault of the Indemnitor and the Indemnitee but only to the extent that such contribution is consistent with the terms of the final judgment. The rights of contribution herein provided shall be in addition to and not in derogation of any other right to contribution which the Indemnitee may have under this Agreement or applicable Laws.

**9.9 Confirmation of Limited Recourse.**

For greater certainty, Hydro acknowledges that nothing in this Article IX shall in any way detract from the limited recourse of Hydro's security and remedies hereunder, as set out in Section 7.1.

**ARTICLE X  
DISPUTE RESOLUTION**

**10.1        Dispute Resolution.**

Each of the parties to the Agreement agrees that any disputes or claims arising out of this Agreement shall be determined solely in accordance with the dispute resolution process set out in Article XXI of the PDA and it shall not bring any action in respect of any matter arising hereunder, other than pursuant to Article XXI of the PDA, against any other party.

**ARTICLE XI  
GENERAL PROVISIONS**

**11.1        Notices.**

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

have been validly and effectively given on the Business Day next following such date of transmission.

- (2) Each Borrowing Notice and Repayment Notice shall be irrevocable and binding on NCN.

**11.2 Time of the Essence.**

Time shall be of the essence of this Agreement.

**11.3 Third Party Beneficiaries.**

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the parties hereto and the Persons contemplated in Section 9.7 or Section 11.7, and no Person, other than the parties hereto and the Persons contemplated in Section 9.7 or Section 11.7, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. For greater certainty, nothing in this Section 11.3 is intended to prevent or restrict the Taskinigahp Trust from receiving Dividends declared by the Board of Directors of TPC pursuant to the NCN Deed of Assignment subject always to TPC's compliance with the covenants, representations and warranties of this Agreement.

**11.4 Enurement.**

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

**11.5**            **Counterparts.**

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

**11.6**            **Knowledge.**

Where any representation or warranty contained in this Agreement or any other Loan Document is expressly qualified by reference to the “best of the knowledge” of NCN or TPC, or where any other reference is made herein or in any Loan Document to “the knowledge” of NCN or TPC, it shall be deemed to refer to the best of the knowledge of the Chief and Council of NCN and the members of the board of directors of TPC, respectively.

**11.7**            **Assignment.**

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

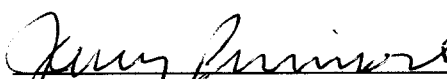
**11.8**            **Non-Merger.**


Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of the parties contained in this Agreement and the other Loan Documents shall not merge on and shall survive the Initial Closing and Final Closing and the making of any Dividend Credit Advance, and notwithstanding such Initial Closing and Final Closing or Dividend Credit Advance, or any investigation made by or on behalf of any party, shall continue in full force and effect. Neither the Initial Closing and Final Closing nor the making of any Dividend Credit Advance shall prejudice any right of one party against any other

party in respect of anything done or omitted hereunder or under any of the other Loan Documents or in respect of any right to damages or other remedies.


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

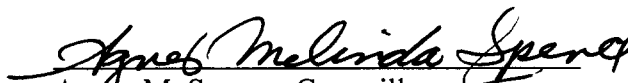
**NISICHAWAYASIIK CREE NATION**

  
\_\_\_\_\_  
Jerry Primrose, Chief

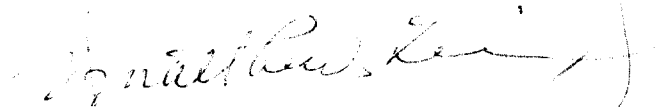
  
\_\_\_\_\_  
Jimmy Hunter-Spence, Councillor

\_\_\_\_\_  
D'Arcy Linklater, Councillor

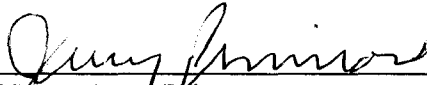
  
\_\_\_\_\_  
Shirley L. Linklater, Councillor

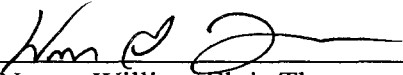
  
\_\_\_\_\_  
Agnes M. Spence, Councillor

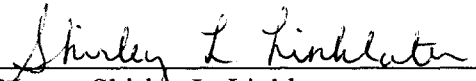
  
\_\_\_\_\_  
William Elvis Thomas, Councillor

  
Matthew Lee

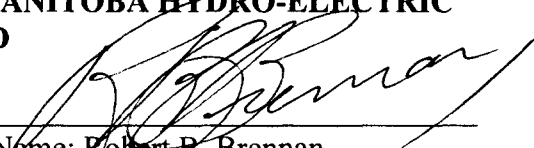
**TASKINIGAHP POWER CORPORATION**

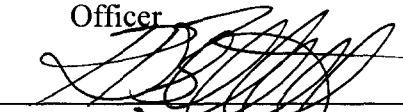
Per:   
Name: Jerry Primrose  
Title: President

Per:   
Name: William Elvis Thomas  
Title: Vice-President

Per:   
Name: Shirley L. Linklater  
Title: Secretary-Treasurer

**THE MANITOBA HYDRO-ELECTRIC BOARD**

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

Per:   
Name: Robert D. Bettner  
Title: Assistant Corporate Secretary

SCHEDULE A

REPAYMENT NOTICE

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

FROM: NISICHAWAYASIIHK CREE NATION ("NCN")

This Repayment Notice is delivered to you pursuant to Section 2.6 of the financing agreement (the "NCN Financing Agreement") dated ●, 2006 between NCN, as borrower, Taskinigahp Power Corporation and Hydro, as lender. All capitalized terms used in this Repayment Notice and defined in the NCN Financing Agreement shall have the meanings defined in the NCN Financing Agreement.

1. NCN hereby gives notice of repayment as follows:

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

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

(c) Amount of principal being repaid: \_\_\_\_\_

NISICHAWAYASIIHK CREE NATION

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

SCHEDULE B

BORROWING NOTICE

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

From: NISICHAWAYASIIHK CREE NATION ("NCN")  
TASKINIGAHP POWER CORPORATION ("TPC")

This Borrowing Notice is delivered to you pursuant to Section 3.2 of the financing agreement (the "NCN Financing Agreement") dated ●, 2006 between NCN, as borrower, TPC and Hydro, as lender. All capitalized terms used in this Borrowing Notice and defined in the NCN Financing Agreement shall have the meaning defined in the NCN Financing Agreement.

1. NCN hereby requests an Dividend Credit Advance as follows:

- (a) Date of Dividend Credit Advance: \_\_\_\_\_
- (b) Amount of Dividend Credit Advance: \_\_\_\_\_
- (c) Payment Instructions: \_\_\_\_\_

2. NCN and TPC hereby certify that:

- (a) All of the representations and warranties of NCN and TPC contained in Section 5.1 of the NCN Financing Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of the date hereof (other than those representations and warranties in Section 5.1 which are specifically limited to a particular date) and except as disclosed in writing to, and accepted in writing by Hydro.
- (b) All of the covenants of NCN and TPC contained in Article VI of the NCN Financing Agreement together with all of the conditions precedent to an Advance in Article IV of the NCN Financing Agreement (to the extent they are within NCN's and/or TPC's control) have been complied with or met in all material respects, except as disclosed in writing to, and accepted in writing by Hydro.
- (c) No Event of Default has occurred and is continuing on the date hereof nor will any Event of Default occur as a result of the aforementioned Dividend Credit Advance, except as disclosed in writing to, and accepted in writing by Hydro.



DATED:

NISICHAWAYASIIHK CREE NATION

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

TASKINIGAHP POWER CORPORATION

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

Name:

Title:

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

Name:

Title:

SCHEDULE C

MATERIAL AGREEMENTS

To be provided on Initial Closing

**SCHEDULE D**

**ISSUED AND OUTSTANDING CAPITAL STOCK AND DEBT**

**To be provided on Initial Closing**

**SCHEDULE E**

**LIABILITIES**

To be provided on Initial Closing

SCHEDULE F

ADDRESS FOR NOTICE

Nisichawayasihk Cree Nation  
Attention: Chief and Council  
General Delivery  
Nelson House, MB  
R0B 1A0

Fax Number: (204) 484-2392

Taskinigahp Power Corporation  
Attention: President  
General Delivery  
Nelson House, MB  
R0B 1A0

Fax Number: (204) 484-2392

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

Fax Number: (204) 474-4947

## SCHEDULE G

### LIST OF SECURITY DOCUMENTS

1. TPC Limited Recourse Guarantee
2. TPC Security Agreement
3. Pledge of TPC's Units
4. Limited Power of Attorney granted by TPC respecting TPC's Units

## SCHEDULE H

### AUTHORIZATIONS - HYDRO

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