
WUSKWATIM PROJECT DEVELOPMENT AGREEMENT

between

NISICHAWAYASIIK CREE NATION,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

- and -

TASKINIGAHP POWER CORPORATION,

- and -

5022649 MANITOBA LTD.,

- and -

WUSKWATIM POWER LIMITED PARTNERSHIP.

DATED June 26, 2006.

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THIS MEMORANDUM OF AGREEMENT made the 26th day of June, 2006.

BETWEEN:

NISICHAWAYASIIHK CREE NATION,

(hereinafter called “**NCN**”),

OF THE FIRST PART,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter called “**Hydro**”),

OF THE SECOND PART,

- and -

TASKINIGAHP POWER CORPORATION,

(hereinafter called “**TPC**”),

OF THE THIRD PART,

- and -

5022649 MANITOBA LTD.,

(hereinafter called the “**General Partner**”),

OF THE FOURTH PART,

- and -

WUSKWATIM POWER LIMITED PARTNERSHIP,

(hereinafter called the “**Limited Partnership**”),

OF THE FIFTH PART.

WHEREAS:

- A. **NCN** is a Cree Nation of approximately 3,867 **Members** (following the constitution of **OPCN** on December 22, 2005, when approximately 1,146 former **Members** became **OPCN** members), approximately 2,480 of whom live on **Reserve Lands** located at Nelson House, upstream of Taskinigup Falls and Wuskwatim Lake and downstream of the **Notigi Control Structure**, which carries on activities within its traditional and Treaty 5 areas;
- B. **NCN's** vision statement is "To exercise sovereignty that sustains a prosperous socio-economic future for the Nisichawayasihk Cree Nation" in accordance with the economic and community development plans established by **NCN** from time to time to meet the needs of **Members** and to share natural resources within **NCN's** traditional territory for the benefit of **Members**, Manitobans and other North Americans;
- C. **Hydro** is a Crown Corporation established in 1949 and continued by the **Hydro Act**, for the purposes of, among other things, providing for the continuance of a supply of power adequate for the needs of the Province of Manitoba, providing and marketing products, services and expertise related to the development, generation, transmission, distribution, supply and end use of power within and outside of the Province, and marketing and supplying power to persons outside the Province;
- D. The **1996 NFA Implementation Agreement** relating to the implementation of the **Northern Flood Agreement** in respect of **NCN** was entered into in March 1996 between **NCN, Canada, Manitoba and Hydro**;
- E. Article 8 of the **1996 NFA Implementation Agreement**, among other things, requires **Hydro** to consult with **NCN** regarding potential projects that qualify as future developments (as defined therein) affecting a water body within the **Nelson House RMA**. Unless the arbitrator under that Agreement relieves **Hydro** of the obligation under that Agreement, **Hydro** will not construct any future development until **NCN** and **Hydro** agree on a compensation agreement or the arbitrator has approved one;
- F. In 1997, in accordance with Article 8 of the **1996 NFA Implementation Agreement**, **NCN** and **Hydro** established a working group to exchange information and facilitate consultation regarding **Hydro's** proposed development at Taskinigup Falls (the **Wuskwatim Project**) and at the **Notigi Control Structure** (the Notigi generating station);
- G. In 1999 the Board of Directors of **Hydro** reviewed its policies and, with the endorsement of its owner, **Manitoba**, made a decision to explore potential business partnerships with First Nations in the vicinity of major new hydro-electric generation projects and the working group established by **NCN** and **Hydro** began to consider a potential partnership arrangement for the development of the **Wuskwatim Project** and the Notigi project;

- H. In May 2001 **Members** voted to support the **Agreement in Principle** setting out certain principles to govern the efforts of **NCN** and **Hydro** (i) to fulfill their respective obligations to each other under Article 8 of the **1996 NFA Implementation Agreement** with respect to the proposed development of the **Wuskwatim Project** and the Notigi project, and (ii) to explore arrangements for **NCN** to participate in a business relationship with **Hydro** in the proposed development. **NCN** and **Hydro** formally signed the **Agreement in Principle** on September 25, 2001;
- I. The earliest in-service date for the Notigi project was deferred to 2014 and therefore negotiations for that project also have been deferred and do not form a part of this **PDA**;
- J. Since signing the **Agreement in Principle** in September 2001, **Hydro** and **NCN** have been in discussions to explore whether a mutually beneficial business relationship for the development of the **Wuskwatim Project** could be agreed upon. In October 2003, **Hydro** and **NCN** agreed in principle to the non-binding **SOU** setting out the proposed terms and conditions of the business arrangement for the development of the **Wuskwatim Project** to guide the finalization of this **PDA**, which **SOU** was filed with the **CEC**;
- K. **NCN** and **Hydro** have stated publicly that they will not proceed with the **Wuskwatim Project** or the **Wuskwatim Project Related Transmission Facilities** unless this **PDA** is approved by **Members**;
- L. While negotiations in respect of the business arrangements were ongoing, to allow for the construction of the **Wuskwatim Project** to proceed within a time frame that would permit the first units to be in service as early as 2009 (recognizing that that time frame might not be achievable), **Hydro** and **NCN** jointly undertook engineering, environmental, consultation, regulatory and other related activities including, without limitation, activities related to the preparation of the **EIS** for the **Wuskwatim Project** and the filing of the **EIS** with **Manitoba Conservation**, and **Hydro** undertook the preparation and filing of the **NFAAT Material** with **Manitoba Conservation** required for the purposes of the **NFAAT Review**;
- M. **NCN** and **Hydro** each have completed their own independent consultations and assessments with respect to all of the matters addressed in this **PDA** and have determined that the development of the **Wuskwatim Project** should proceed on the terms and conditions set out in this **PDA**;
- N. The nature and significance of all major aspects of this **PDA** have been explained to **Members** at community meetings held in accordance with the provisions set forth in Article XXV of this **PDA** and **Members**, voting by **Referendum** held in accordance with the provisions set forth in Article XXV of this **PDA**, have voted to support the signing of this **PDA** by **Chief and Council**, as evidenced by a **Referendum Certificate** to that effect;
- O. The board of directors of **TPC**, by resolution, has approved this **PDA** and has authorized the President and the Secretary to execute the same on behalf of **TPC**;

- P. **NCN's Chief and Council, by Council Resolution, have approved this PDA and have authorized Chief and Council to execute the same on behalf of NCN;**
- Q. **The Board of Directors of Hydro, by resolution, has approved this PDA and has authorized the President to execute the same on behalf of Hydro;**
- R. **The Board of Directors of the General Partner, by resolution, has approved this PDA on its own behalf and as general partner for and on behalf of the Limited Partnership and has authorized the President to execute the same on behalf of the General Partner and the Limited Partnership; and**
- S. **The Lieutenant Governor in Council, by Order in Council, has approved such of the transactions contemplated by this PDA as are required to be approved pursuant to the Hydro Act;**

NOW THEREFORE THIS PDA WITNESSETH THAT in consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties hereby covenant and agree as follows:

ARTICLE I

INTERPRETATION

Preamble

1.1 The preamble to this PDA shall be deemed to be an integral part of this PDA.

Defined Terms

1.2 For the purposes of this PDA, unless the context otherwise requires, the following terms when capitalized and printed in bold shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“AHC” means the **Allied Hydro Council;**

“ASL” means above sea level;

“ATEC” means Atoskiwin Training and Employment Centre for Excellence, the training and employment agency established by NCN to provide directly or indirectly, among other things, educational upgrading, skills training and referral of **Members;**

“**Aboriginal Training Partners**” means NCN, each of the **Keeyask Cree Nations, MKO and MMF;**

“**Access Management Plan**” means the Access Management Plan attached hereto as Schedule 6-17;

“**Access Road**” shall mean the access road to the **Wuskwatim Project** described in section 6.12 of this **PDA**;

“**Access Road Transmission Easement Agreement**” means an easement agreement to be entered into between the **Limited Partnership** and **Hydro** granting an easement to **Hydro** over a certain portion of the **Access Road** for the purposes of transmission lines as shown on Schedule 6-8, which shall be substantially in the form of the **Access Road Transmission Easement Agreement** attached hereto as Schedule 6-14;

“**Access Road User Agreement**” means an agreement to be entered into between the **Limited Partnership** and **Hydro** granting non-exclusive rights of use of the **Access Road** to **Hydro**, which shall be substantially in the form of the **Access Road User Agreement** attached hereto as Schedule 6-13;

“**Adjustment Date**” means the first anniversary of the **Final Closing Date**;

“**Advance Poll**” shall have the meaning set out in section 25.7 of this **PDA**;

“**Advance Tax Ruling**” means an advance income tax ruling from the Canada Revenue Agency related to the structure of **NCN’s** investment in the **Limited Partnership** made pursuant to **NCN’s Ruling Request**;

“**Advisors**” means all duly authorized employees, representatives and agents, including legal, engineering, financial, business and accounting advisors and other technical consultants;

“**Advisory Committee on Employment**” means an advisory committee to the **Project Manager** which the **Project Manager** agrees to establish to perform the functions described in section 9.8 of this **PDA**;

“**Agreement in Principle**” means the agreement in principle made between **Hydro** and **NCN** dated September 25, 2001;

“**Allied Hydro Council**” shall have the same meaning ascribed thereto in the **BNA** from time to time, and generally means the Council formed by those unions described in the **BNA**, to act as exclusive bargaining agent for the unions in the negotiation and administration of the **BNA**;

“**Applicant**” shall have the meaning ascribed thereto in section 21.4 of this **PDA**;

“**Approved Funds**” shall have the meaning ascribed thereto in section 1.1 of the **TPC Financing Agreement**;

“**Arbitrator**” means an arbitrator appointed in accordance with the procedure set out in Article XXI of this Agreement to adjudicate a dispute among the **Parties**;

“Augmented Flow Program” means a deviation to the **CRD License**, subject to the approval of **Manitoba** annually at the request of **Hydro**, to allow the diversion of more water on average from the Churchill River into the Nelson River than permitted by the **CRD License** by permitting, in the amounts and on the terms and conditions specified from time to time in the annual approval, the maximum and minimum water levels of Southern Indian Lake to be increased and decreased, respectively, an increase in the draw down of Southern Indian Lake, a reduction in the minimum water level immediately upstream of the **Notigi Control Structure** and, in certain periods, an increase in the allowable discharges and the allowable flow at the **Notigi Control Structure** and at Thompson, respectively;

“BNA” means the Burntwood/Nelson Agreement, a collective agreement made between the **AHC** and the **HPMA** and any amendments thereto or additions thereof;

“Birch Tree Lake Stability Guideline” means a guideline to be followed in the operation of the **Wuskwatim Project** to moderate downstream water level fluctuations on Birch Tree Lake attributable to the operation of the **Wuskwatim Project** during the course of a calendar day to less than 0.10 metres (0.3 feet) during open water periods and 0.15 metres (0.5 feet) during ice cover periods, except as described in section 6.33 of this **PDA**;

“Birchtree Station” means the proposed new transmission switching station to be located south of the City of Thompson in the local government district of Mystery Lake, to be constructed as part of the **Wuskwatim Transmission Project**;

“CAC Terms of Reference” means the terms of reference for the **Construction Advisory Committee** attached hereto as Schedule 3-1, as amended by the **Limited Partnership** from time to time;

“CEC” means the Manitoba Clean Environment Commission established under *The Environment Act* (Manitoba);

“CRD” means the diversion of water from the Churchill River to the Nelson River and the impoundment of water on the Rat River and Southern Indian Lake as authorized by the **CRD Licence**;

“CRD Easement Agreement” means an easement agreement to be entered into between the **Limited Partnership** and **Manitoba** and **Hydro** granting an easement over a portion of the **Project Lands** as shown on Schedule 6-10, with respect to certain interests in connection with the **CRD**, pursuant to the **CRD Easement Agreement** which is attached as Schedule “A” to the **Wuskwatim Lands Transfer Agreement**;

“CRD Licence” means the interim or final licence and associated approvals to operate the **CRD** granted from time to time by **Manitoba** to **Hydro** under *The Water Power Act* (Manitoba);

“CGVD28 Revision No. 3, 1971” shall have the meaning ascribed thereto in section 6.17 of this **PDA**;

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

“**Capital Requirements**” shall have the meaning ascribed thereto in section 4.1 of this **PDA**;

“**Cash Call Contribution**” means an additional equity contribution made by a **Limited Partner** to the **Limited Partnership** pursuant to a demand made upon such **Limited Partner** in accordance with the terms of the **Limited Partnership Agreement**;

“**Cash Call Credit Facility**” shall have the meaning ascribed thereto in section 1.1 of the **TPC Financing Agreement**;

“**Chief**” means the Chief for the time being of **NCN** elected and in office in accordance with the **NCN Election Code**;

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

“**Churchill/Burntwood/Nelson River Area**” shall have the meaning ascribed thereto in the **BNA**, and generally means:

- (a) the area of the Churchill River Water Power Reserve from Granville Lake downstream to Hudson Bay;
- (b) the area of the Burntwood River Water Power Reserve from Southern Indian Lake downstream to Split Lake;
- (c) the area of the Nelson River Water Power Reserve from the outlet of Lake Winnipeg downstream to Hudson Bay; and
- (d) the following communities: the incorporated community of South Indian Lake; the Northern Affairs communities of Granville Lake, Nelson House, Ilford, Wabowden, Thicket Portage, Pikwitonei, Norway House and Cross Lake; the towns of Leaf Rapids, Churchill, and Gillam; the City of Thompson; and **NCN**, the **Keeyask Cree Nations**, Norway House Cree Nation and Cross Lake First Nation;

as illustrated on Schedule D to the **BNA**, a copy of which is attached hereto as Schedule 9-2;

“**Churchill Weir Licence**” means licence number 2327 issued on May 15, 1998 pursuant to *The Environment Act* (Manitoba) in respect of the construction and operation of a rock fill weir and associated fish passage and marina facilities on the lower Churchill River near the Town of Churchill;

“**City of Thompson Agreement**” means the agreement made between the City of Thompson and **Hydro** dated December 16, 1976, as amended by agreement dated May 12, 1982, in respect of certain actions taken or to be taken by **Hydro** related to the **CRD Licence**;

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

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

“**Commitment Agreement**” means an agreement to be entered into on the **Initial Closing** between **Hydro**, **NCN**, **TPC** and **Taskinigahp Trust**, substantially in the form of the **Commitment Agreement** attached hereto as Schedule 16-3;

“**Communications Tower Easement Agreement**” means an easement agreement to be entered into between the **Limited Partnership** and **Hydro** granting an easement to **Hydro** over a parcel of land contained within the **Project Lands**, as shown on Schedule 6-9, upon which a communications tower and other equipment owned by **Hydro** will be located, which shall be substantially in the form of the **Communications Tower Easement Agreement** attached hereto as Schedule 6-16;

“**Confidential Information**” means any and all information, whether written, in the form of computer data or in any other form whatsoever, relating to **Hydro** or to the **Limited Partnership** or to their respective businesses or to the **Wuskwatim Project**, not including this **PDA** but including, without limitation, all plans, designs, costs, estimates, studies, budgets, projections, forecasts, analyses and research, as well as reports and other information pertaining to costs, margins, bids and other business activities and all intellectual property, including know-how, trade secrets and technical expertise, but does not include any information that has been released by **Hydro** or by **NCN** with **Hydro’s** consent into the public domain or otherwise is now or subsequently becomes available to the public through no fault or breach of this **PDA** or any **Confidentiality Agreements** on the part of **NCN** or **TPC** or their respective **Advisors**;

“**Confidentiality Agreements**” means agreements in favour of **Hydro** signed by various individuals involved by or on behalf of any of **NCN** or **TPC** in matters pertaining to the **Wuskwatim Project**, including **Advisors**, whereby such individuals agreed to keep confidential all confidential information as defined therein and to return such confidential information to **Hydro** upon demand by **Hydro**;

“Consortium Members’ Agreement” means an agreement dated September 29, 2004 made between NCN, each of the **Keeyask Cree Nations, MKO, MMF, Hydro, Manitoba** and the **Training Consortium**;

“Construction Advisory Committee” means an advisory committee to the Limited Partnership to be established by the Limited Partnership in accordance with the CAC Terms of Reference;

“Construction Agreement” means the agreement to be entered into on **Initial Closing** between the **Limited Partnership**, as owner, and **Hydro**, as **Project Manager**, whereby **Hydro**, either directly or indirectly through subcontractors, will plan, design, engineer, construct and commission the **Wuskwatim Project**, which shall be substantially in the form of the **Construction Agreement** attached hereto as Schedule 1-4;

“Construction Conditions” means all of the conditions precedent to the **Limited Partnership** proceeding with the construction of the **Wuskwatim Project** as set forth in Article XV of this **PDA**;

“Construction Lands” shall have the meaning ascribed thereto in section 6.15 of this **PDA**;

“Construction Notice” means a notice in writing to be given by the **Limited Partnership** in accordance with section 2.7 of this **PDA**;

“Construction Period” means the approximately six year period during which the **Wuskwatim Project** is being constructed, which for the purposes of this **PDA** will be the period commencing on the **Initial Closing Date** and ending on the **Final Closing Date**;

“Contribution Agreements” means agreements to be entered into from time to time between the **Training Consortium** and each of **Canada, Manitoba** and **Hydro** for the funding of the **Training Initiative**;

“Contribution Sub-Agreements” means agreements to be entered into from time to time between the **Training Consortium** and each of the **Aboriginal Training Partners**;

“Costs Calculation Criteria” shall have the meaning ascribed thereto in section 1.1 of the **Operations and Maintenance Agreement**;

“Council Resolution” means a resolution passed by **Chief and Council** at a duly convened meeting of **Chief and Council** at which a quorum is present in person or by telephone;

“Councillor” means a Councillor for the time being of **NCN** elected and in office in accordance with the **NCN Election Code**;

“Credit Facilities” shall have the meaning ascribed thereto in section 1.1 of the **Project Financing Agreement**;

“**Date of this PDA**” means the formal date of this **PDA** to be inserted on the face page of this **PDA** and shall be the date on which all of the **Parties** have executed this **PDA** or, if all of the **Parties** have not executed this **PDA** on the same date, shall be the date on which the last of the **Parties** to execute this **PDA** executes this **PDA**;

“**Debt Ratio**” shall have the meaning ascribed thereto in the **Project Financing Agreement**;

“**Deficiency Notice**” means a notice delivered by **NCN** and **TPC**, acting jointly, to the **Limited Partnership** specifying, as appropriate in the circumstances, either

- (a) which of the **Closing Licenses** **NCN** and **TPC** believe would result in a material change to a **Fundamental Feature**, and in what respect, that **NCN** and **TPC** do not accept; or
- (b) which proposed change or changes to a **Closing License** **NCN** and **TPC** believe would result in a material change to a **Fundamental Feature**, and in what respect, that **NCN** and **TPC** do not accept;

“**Designated Trades**” shall have the meaning ascribed thereto in the **Supplemental Funding Agreement**;

“**Direct Negotiation**” means a non-tendered, direct negotiation process by which **Hydro** in its capacity as **Project Manager** has concluded or may conclude contracts with identified entities eligible for a preference under the **Northern Purchasing Policy**;

“**Direct Negotiation Contracts**” means those contracts covering a work package in relation to the construction of the **Wuskwatim Project** that will be available to be negotiated using **Direct Negotiation** between **Hydro**, as **Project Manager**, and a **Qualifying NCN Business**;

“**Dispute**” shall have the meaning ascribed thereto in section 21.4 of this **PDA**;

“**Dispute Notice**” shall have the meaning ascribed thereto in section 21.4 of this **PDA**;

“**Dividend Credit Facility**” means the **Dividend Credit Facility** defined in section 1.1 of the **NCN Financing Agreement** pursuant to which **Hydro** will provide loans to **NCN** to provide a cash flow to **NCN** based on **TPC’s Own Invested Cash**;

“**EIS**” means the environmental impact statement and documentation, including any supplemental filings filed with the **CEC** in respect of the **Wuskwatim Project** in accordance with requirements under federal and provincial legislation and the **EIS Guidelines**, to inform **Members**, the public and federal and provincial decision-makers about the anticipated environmental effects of the **Wuskwatim Project**;

“**EIS Guidelines**” means the *Guidelines for the Preparation of an Environmental Impact Statement for the Wuskwatim Generation Project* issued by federal and provincial regulatory authorities dated April 29, 2002;

“**EMT**” means the team of individuals jointly selected by the **Parties** to assist them in managing and carrying out the environmental assessment of the **Wuskwatim Project**;

“**Electoral Officer**” means the electoral officer duly appointed by **Chief and Council** under the **NCN Election Code**;

“**Energy Rate Review**” means a review of the pricing mechanisms used under the **Power Purchase Agreement** conducted in accordance with Article XVII of this **PDA**;

“**Environmental Impact Assessment**” means the environmental impact assessment of the environmental effects of the **Wuskwatim Project** conducted under federal and provincial legislation, including public consultation and review, prior to decisions being made by competent authorities to approve, authorize, grant permission for or licence the **Wuskwatim Project**;

“**Equity Credit Facility**” shall have the meaning ascribed thereto in section 1.1 of the **TPC Financing Agreement**;

“**Equity Credit Facility Adjustment Conditions**” shall have the meaning ascribed thereto in section 5.6 of this **PDA**;

“**Equity Credit Final Closing Conditions**” shall have the meaning ascribed thereto in section 5.4 of this **PDA**;

“**Expert**” means an individual or a firm or an organization of individuals independent of the **Parties** with knowledge, expertise and experience in the hydro-electric generation and the electric utility industry who or which is appointed pursuant to the procedure set out in section 17.15, 18.10, 19.9 or 20.8 of this **PDA**;

“**FSL**” means the full supply level for the reservoir to be created by the **Wuskwatim Project** as measured on Wuskwatim Lake;

“**Final Closing**” means the final closing at the **Time of Final Closing** on the **Final Closing Date**;

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

“**Final Closing Purchase Right**” shall have the meaning ascribed thereto in the **TPC Financing Agreement**;

“**Final Closing Sale Right**” shall have the meaning ascribed thereto in section 5.3 of this **PDA**;

“**First Completion Date**” means the date on which the first of the three turbine units comprising the **Wuskwatim Generating Station** is fully commissioned and comes into service as evidenced

by a commissioning certificate issued in respect of that turbine unit by **Hydro's** commissioning engineer;

“**Fiscal Year**” means the period commencing on April 1st in any year and ending on March 31st in the following year;

“**Fundamental Construction Features**” means the **Fundamental Features** described in section 2.10 (a) of this **PDA**;

“**Fundamental Features**” means the **Fundamental Construction Features** and the **Fundamental Operating Features**;

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

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

“**General Partner**” means 5022649 Manitoba Ltd., in its capacity as the general partner of the **Limited Partnership** or such other general partner as may be appointed from time to time in accordance with the provisions of the **Limited Partnership Agreement**;

“**HPMA**” shall have the same meaning ascribed thereto in the **BNA** from time to time, and generally means the **Hydro Projects Management Association** which is:

- (a) composed of representatives of **Hydro**, contractors engaged by **Hydro** on projects covered by the **BNA**, and their subcontractors, as provided in the constitution of the **HPMA**; and
- (b) recognized as the exclusive bargaining agent in the negotiation and administration of the **BNA** for contractors engaged or about to be engaged on construction work undertaken by **Hydro**;

“**HRSDC**” means Human Resources and Skills Development Canada, a department of the Government of Canada or its successor department or agency;

“**HVDC**” means high voltage direct current;

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

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

“Hydro Service Agreements” means, collectively, the **Management Agreement**, the **Project Financing Agreement**, the **Construction Agreement**, the **Power Purchase Agreement**, the **Operations and Maintenance Agreement**, the **Interconnection and Operating Agreement** and the **System Operations and Dispatch Agreement**;

“INAC” means Indian and Northern Affairs Canada, a department of the Government of Canada or its successor department or agency;

“Implementation Funding” shall have the meaning ascribed thereto in section 22.2 of this **PDA**;

“Initial Closing” means the closing of the **Limited Partnership Transaction** at the **Time of Initial Closing** on the **Initial Closing Date**;

“Initial Closing Conditions” means all of the closing conditions in respect of the **Limited Partnership Transaction** set forth in Article XIII of this **PDA**;

“Initial Closing Date” means the date for the **Initial Closing** and shall be the second business day following the execution of this **PDA** by the **Parties** or such earlier or later date as may be agreed to by the **Parties**;

“Initial Limited Partnership Agreement” means the limited partnership agreement entered into between the **General Partner**, as general partner, and **Hydro**, as limited partner, dated the 9th day of December, 2004;

“Insufficient Transactions” shall have the meaning ascribed thereto in section 1.1 of the **Power Purchase Agreement**;

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

“Interconnection and Operating Agreement” means the agreement entered into between **Hydro** (Transmission and Distribution Business Unit) and **Hydro** (Power Supply Business Unit) dated May 4, 2005, as amended, to be assigned by **Hydro** (Power Supply Business Unit) to the **Limited Partnership**, whereby the **Wuskwatim Project** will be interconnected with the **Integrated Power System**, a copy of which **Interconnection and Operating Agreement** is attached hereto as Schedule 1-7;

“kV” means kilovolt;

“Keeyask Cree Nations” means Tataskweyak Cree Nation, War Lake First Nation, Fox Lake Cree Nation and York Factory First Nation;

“**Keeyask Project**” means the proposed hydro-electric generating station and related works to be located on the Nelson River in the vicinity of Gull Rapids just upstream from the point at which the Nelson River flows into Stephens Lake;

“**Limited Partner**” means either of **Hydro** or **TPC** in its capacity as a limited partner under the **Limited Partnership Agreement** and “**Limited Partners**” shall mean both of them in such capacity;

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

“**Limited Partnership Agreement**” means the limited partnership agreement amending and restating the **Initial Limited Partnership Agreement**, to be entered into on **Initial Closing** between the **General Partner**, as general partner, and **Hydro** and **TPC**, as limited partners, which shall be substantially in the form of the **Limited Partnership Agreement** attached hereto as Schedule 1-1;

“**Limited Partnership Transaction**” means the transactions to occur on the **Initial Closing** and includes, among other things, **Hydro**, the **General Partner** and **TPC** entering into **Subscription Agreements** and subscribing for units in the **Limited Partnership** and entering into the **Limited Partnership Agreement** and the entering into, or the assignment to the **Limited Partnership**, as the case may be, of the **Hydro Service Agreements**, but does not include the entering into of the **NCN Adverse Effects Agreement**, the **Revenue Advance Consolidation Agreement**, the **NCN Deed of Assignment**, the **Taskinigahp Trust Indenture**, the **Commitment Agreement or the Project Lands Agreements**, although the execution and delivery of those agreements is a condition of **Initial Closing**;

“**MAC Terms of Reference**” means the terms of reference for the **Monitoring Advisory Committee** attached hereto as Schedule 3-2, as amended by the **Limited Partnership** from time to time;

“**MAET**” means Manitoba Advanced Education and Training, a department of the Government of Manitoba, or its successor department or agency;

“**MKO**” means Manitoba Keewatinowi Okimakanak Inc.;

“**MMF**” means Manitoba Metis Federation Inc.;

“**Management Agreement**” means an agreement to be entered into on the **Date of this PDA** between the **Limited Partnership**, as owner, and **Hydro** as contractor, whereby **Hydro** will manage the business and affairs of the **Limited Partnership** on behalf of the **General Partner**, which shall be substantially in the form of the **Management Agreement** attached hereto as Schedule 1-2;

“**Manitoba**” means Her Majesty the Queen in Right of Manitoba;

“**Manitoba Conservation**” means the department of the Government of Manitoba responsible for the administration of *The Environment Act* (Manitoba) and regulations thereunder and other environmental legislation or its successor department;

“**Maturity Date**” means the fiftieth anniversary of the **Final Closing Date** or such other meaning as may be ascribed thereto in the **TPC Financing Agreement**;

“**Maturity Date Sale Right**” shall have the meaning ascribed thereto in section 5.12 of this **PDA**;

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

“**Monitoring Advisory Committee**” means an advisory committee to the **Limited Partnership** to be established by the **Limited Partnership** in accordance with the **MAC Terms of Reference**;

“**NAC Residents**” means residents of the Nelson House Northern Affairs Community who are not **Members**;

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

“**NCN Adverse Effects Agreement**” means an agreement to be entered into between the **Limited Partnership**, **NCN**, **Hydro** and the **Taskinigahp Trust** whereby, among other things, the **Limited Partnership** will compensate **NCN** and **Members** for the adverse effects of the **Wuskwatim Project** and **Hydro** will compensate **NCN** and **Members** for the adverse effects of the **Wuskwatim Transmission Project**, which shall be substantially in the form of the **NCN Adverse Effects Agreement** attached hereto as Schedule 11-1;

“**NCN Business**” means any partnership, trust, corporation or other entity legally and beneficially owned or controlled by **NCN** or by any one or more **Members** or owned or controlled by a subsidiary of any partnership, trust, corporation or other entity legally and beneficially owned or controlled by **NCN** or by any one or more **Members**;

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

“**NCN Election Code**” means the election code established by and for **NCN** pursuant to the *Indian Act* (Canada), which election code has been in force and of effect since August, 1998, or pursuant to any successor election code established pursuant to legislation or lawfully adopted by **NCN**;

“**NCN Financing Agreement**” means an agreement to be entered into on **Initial Closing** between **NCN**, **TPC** and **Hydro** whereby **Hydro**, as lender, will provide debt financing to **NCN**, the repayment of which will be guaranteed by **TPC**, which shall be substantially in the form of the **NCN Financing Agreement** attached hereto as Schedule 5-2;

“**NCN’s Future Development Costs**” means all of **NCN’s** costs associated with **NCN’s** participation in planning the development of the **Wuskwatim Project**, negotiating matters referred to in Article 8 of the **1996 NFA Implementation Agreement** and negotiating **NCN’s** investment in the **Wuskwatim Project**, including costs related to **NCN’s Future Development Office**;

“**NCN’s Future Development Office**” means the team of employees and contractors, as well as the facilities and office equipment, established by **NCN** to facilitate **NCN’s** participation in planning the development of the **Wuskwatim Project** and negotiating **NCN’s** investment in the **Wuskwatim Project**;

“**NCN Loan Agreements**” means the **TPC Financing Agreement** and the **NCN Financing Agreement**;

“**NCN’s Proportionate Share**” shall have the meaning ascribed thereto in section 3.2 of this **PDA**;

“**NCN’s Ruling Request**” means the ruling request made to the Canada Revenue Agency by **NCN** by letter dated March 16, 2004, as amended by letters dated May 25, 2004, May 18, 2005, July 19, 2005, October 17, 2005, January 13, 2006 and February 3, 2006;

“**NCN’s Training Funds**” means that portion of the **Wuskwatim PPT Funds** allocated to **NCN** for training of **Members** and **NAC Residents**;

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

“**NFAAT Material**” means the materials and documentation, including any supplemental filings and responses to interrogatories, prepared in respect of the **Wuskwatim Project** to inform decision-makers about the justification, need for and alternatives to the **Wuskwatim Project** and the **Wuskwatim Transmission Project** and filed by **Hydro** with **Manitoba Conservation** for the purposes of the **NFAAT Review**;

“**NFAAT Review**” means a process established by **Manitoba** for the review of the justification, need for and alternatives to the **Wuskwatim Project** and the **Wuskwatim Transmission Project** by the **CEC**;

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

“Nelson House RMA” means the Nelson House Resource Management Area, being the area described in and shown on Schedule 6.1 of the **1996 NFA Implementation Agreement** and includes the rivers and lakes therein and the **Reserve Lands** which may from time to time be included in the area;

“Nisichawayasihk Nehethowuk” is a Cree phrase which means “the people from where the three rivers meet and who speak the language of the four winds”;

“Non-Completion Purchase Right” shall have the meaning ascribed thereto in the **TPC Financing Agreement**;

“Non-Completion Sale Right” shall have the meaning ascribed thereto in section 5.9 of this **PDA**;

“Northern Aboriginal” shall have the meaning ascribed thereto in the **BNA** and generally means status Indians, Métis, non-status Indians and Inuit, each of whom qualify as **Northern Residents**;

“Northern Aboriginal Contractor” shall have the meaning ascribed thereto in the **BNA** from time to time, and generally means a Manitoba business:

- (a) that is at least fifty (50%) percent owned by an Aboriginal resident(s) or organization(s); and
- (b) that is based in or whose Aboriginal owner has resided within the Northern Affairs boundary for a cumulative period of five (5) years or more;

“Northern Flood Agreement” means the agreement made between **Manitoba, Hydro**, the Northern Flood Committee, Inc. and **Canada** dated December 16, 1977 and all Schedules annexed thereto and, for the purposes of this definition, includes the 1977 Economic Development Agreement among the same parties dated September 1, 1977;

“Northern Purchasing Policy” means the policy adopted by **Hydro** and amended from time to time to guide procurement actions by **Hydro** aimed at promoting business opportunities for **Northern Aboriginals** and northern Manitoba businesses in relation to work conducted by **Hydro** within northern Manitoba, a copy of which is attached as Schedule 10-1 hereto;

“Northern Resident” shall have the meaning ascribed thereto in the **BNA** from time to time, and generally means a person who has resided in that part of Manitoba north of the boundary set out in Schedule D to the **BNA**, a copy of which is attached as Schedule 9-2 hereto, for:

- (a) a period of five years accumulatively, or more, and

- (b) a period of six consecutive months, or more, immediately prior to being referred to employment or re-employment (in this case, on the **Wuskwatim Project**), without being absent during that six month period except as provided for in Article 13.5, 13.6 and 13.7 of the **BNA**;

“**Notigi Control Structure**” means the structure located on the Rat River between Notigi Lake and Wapisu Lake used to regulate diversion flows into the Rat/Burntwood River systems;

“**OPCN**” means O-Pipon-Na-Piwin Cree Nation, which was constituted as a band pursuant to the *Indian Act* (Canada) on December 22, 2005;

“**Open Competitive Tendering**” means the process adopted by **Hydro** for the open call for, and evaluation of, competitive tenders on prospective contracts relating to the construction of the **Wuskwatim Project**, the principal features of which shall include:

- (a) the open solicitation to the public of tenders based on request for proposals or contract specifications disclosed to the prospective bidders at the outset of the tendering process, as may be modified and communicated to prospective bidders in advance of the close of the tender period;
- (b) the receipt of confidential, sealed bids within a defined tender period; and
- (c) the award, by **Hydro**, of the subject contract to a qualified bidder, to be based on evaluations of all qualified bids in accordance with criteria established by **Hydro**, consistent with the terms of this **PDA** and with the terms of the call for tenders or request for proposals;

“**Operations and Maintenance Agreement**” means an agreement to be entered into on **Initial Closing** between the **Limited Partnership**, as owner, and **Hydro** as contractor, whereby **Hydro** will manage the maintenance and on-site operations of the **Wuskwatim Project**, which shall be substantially in the form of the **Operations and Maintenance Agreement** attached hereto as Schedule 1-6;

“**PDA**” means this Project Development Agreement including all Schedules and all amendments hereto and extensions hereof;

“**Party**” means any of **Hydro**, **NCN**, **TPC**, the **General Partner** and the **Limited Partnership** and **Parties** shall mean all of them;

“**Power Purchase Agreement**” means an agreement to be entered into on **Initial Closing** between the **Limited Partnership** and **Hydro** whereby the **Limited Partnership** will sell to **Hydro** and **Hydro** will purchase from the **Limited Partnership** all of the energy generated by the **Wuskwatim Project**, which shall be substantially in the form of the **Power Purchase Agreement** attached hereto as Schedule 1-5;

“**Pricing Principles**” shall mean the **Pricing Principle** and the **Pricing Criteria**, each as defined in section 1.1 of the **Power Purchase Agreement**;

“**Program**” shall have the meaning ascribed thereto in section 7.16 of this **PDA**;

“**Project Financing Agreement**” means an agreement to be entered into on **Initial Closing** between the **Limited Partnership** and **Hydro** whereby **Hydro**, as lender, will provide debt financing to the **Limited Partnership**, which shall be substantially in the form of the **Project Financing Agreement** attached hereto as Schedule 1-3;

“**Project Lands**” means all of the real property required for the construction and operation of the **Wuskwatim Project**, as shown on Schedule 6-9, together with the **Access Road**, as shown on Schedule 6-8;

“**Project Lands Agreements**” means, collectively, the **Wuskwatim Lands Transfer Agreement**, the **CRD Easement Agreement**, the **Access Road Transmission Easement Agreement**, the **Transmission Corridor Easement Agreement**, the **Communications Tower Easement Agreement**, the **Access Road User Agreement**, the **Transmission Lands Lease** and the **Quarry Mineral Lease**;

“**Project Local Transmission Facilities**” means that portion of the **Wuskwatim Project Related Transmission Facilities** located on or routed through lands within the **Nelson House RMA**;

“**Project Manager**” means **Hydro** in its capacity as project manager under the **Construction Agreement**;

“**Project Specific Letter of Agreement**” means a letter of agreement in respect of a particular project covered by the **BNA** that when signed by the **HPMA** and the **AHC** will be attached to and form part of the **BNA** and will amend the **BNA** only for the purposes of that project;

“**Qualified Nominee**” means an individual nominated by **NCN** to act as a director of the **General Partner** who:

- (a) other than by virtue of being a **Member**, or other than by virtue of acting as a director of the **General Partner** as the nominee of **NCN**:
 - (i) is not a director, officer, employee, agent or paid representative of **TPC**, or a trustee, officer, employee, agent or paid representative of **Taskinigahp Trust**; or
 - (ii) is not otherwise associated with either **TPC** or **Taskinigahp Trust**; and
 - (iii) does not receive payment in any form directly or indirectly from either **TPC** or **Taskinigahp Trust**; and

(b) is qualified to act as a director in accordance with the requirements set out in *The Corporations Act* (Manitoba);

“Qualifying NCN Business” means an **NCN Business** that meets the criteria to be considered a **Northern Aboriginal Contractor**;

“Quarry Mineral Lease” means an agreement to be entered into between **Manitoba** and the **Limited Partnership** whereby **Manitoba** agrees to lease the quarry minerals located on the **Wuskwatim Generating Station** site to the **Limited Partnership** on the terms and conditions set out therein, which shall be substantially in the form of the **Quarry Mineral Lease** attached hereto as Schedule 6-11-A;

“Referendum” means the submission of this **PDA** to a vote of **Members** in the manner described in Article XXV of this **PDA**;

“Referendum Certificate” means a certificate issued by the **Electoral Officer** pursuant to the **Referendum Rules** certifying the votes cast in the **Referendum**;

“Referendum Poll” shall have the meaning set out in section 25.7 of this **PDA**;

“Referendum Rules” means the rules for the conduct of the **Referendum** attached hereto as Schedule 25-1;

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

“Reply” shall have the meaning ascribed thereto in section 21.5 of this **PDA**;

“Representative Price” shall have the meaning ascribed thereto in section 17.2 of this **PDA**;

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

“Reserve Lands” means the lands contained within the **Reserve**;

“Respondent” shall have the meaning ascribed thereto in section 21.5 of this **PDA**;

“Revenue Advances” shall have the meaning ascribed thereto in section 8.12 of this **PDA**;

“Revenue Advance Consolidation Agreement” means the agreement amending, restating and consolidating the certain advance agreements as described therein, which shall be substantially in the form of the **Revenue Advance Consolidation Agreement** attached hereto as Schedule 8-1;

“**SOU**” means the Summary of Understandings made between **Hydro** and **NCN** dated August 2002, as amended and restated dated October 2003, with respect to the proposed arrangements for the development of the **Wuskwatim Project**;

“**Service Parameters**” shall have the meaning ascribed thereto in section 1.1 of the **Operations and Maintenance Agreement**;

“**Schedule**” means a schedule identified in section 1.11 of this **PDA** and attached to this **PDA**;

“**Subscription Agreement**” means the form for the subscription for units in the **Limited Partnership**, which shall be substantially in the form of the **Subscription Agreement** attached as a schedule to the **Limited Partnership Agreement**;

“**Subscription Price**” means the sum of \$1,000 for each unit in the **Limited Partnership** subscribed for pursuant to a **Subscription Agreement**;

“**Substantial Construction Start**” means, in relation to the construction of the **Wuskwatim Project**, the substantial completion of the **Access Road** and camp infrastructure;

“**Supplemental Funding Agreement**” means the agreement between **Hydro** and **NCN** dated March 3, 2003 in respect of **Supplemental Training Funds**;

“**Supplemental Training Funds**” means the up to \$2 million of additional **Wuskwatim Project** funds that may be made available to **NCN** to supplement **NCN’s Training Funds** for the training of **Members** and **NAC Residents in Designated Trades** on the terms and conditions set forth in the **Supplemental Funding Agreement**;

“**System Operations and Dispatch Agreement**” means an agreement to be entered into on **Initial Closing** between the **Limited Partnership** and **Hydro** whereby **Hydro** will control and operate the **Wuskwatim Project**, including matters related to the dispatch of the **Wuskwatim Generating Station**, which shall be substantially in the form of the **System Operations and Dispatch Agreement** attached hereto as Schedule 1-8;

“**TPC**” means Taskinigahp Power Corporation, a corporation incorporated under *The Corporations Act* (Manitoba);

“**TPC Financing Agreement**” means an agreement to be entered into on **Initial Closing** between **TPC** and **Hydro** whereby **Hydro**, as lender, will provide debt financing to **TPC**, which shall be substantially in the form of the **TPC Financing Agreement** attached hereto as Schedule 5-1;

“**TPC’s Construction Cash Call Requirements**” shall have the meaning ascribed thereto in section 1.1 of the **TPC Financing Agreement**;

“TPC’s Invested Cash” shall have the meaning ascribed thereto in section 1.1 of the **TPC Financing Agreement**;

“TPC’s Own Invested Cash” shall have the meaning ascribed thereto in section 1.1 of the **NCN Financing Agreement**;

“TPC’s Operating Cash Call Requirements” shall have the meaning ascribed thereto in section 1.1 of the **TPC Financing Agreement**;

“Taskinigahp Trust” means the trust settled by **NCN** on the terms and for the purposes set out in the **Taskinigahp Trust Indenture**;

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

“Term Sale Right” shall have the meaning ascribed thereto in section 5.10 of this **PDA**;

“Time of Final Closing” means 10 o’clock in the forenoon, Manitoba time, on the **Final Closing Date**;

“Time of Initial Closing” means 10 o’clock in the forenoon, Manitoba time, on the **Initial Closing Date**;

“Training Consortium” means **Wuskwatim and Keeyask Training Consortium Inc.**, a corporation incorporated under *The Corporations Act* (Manitoba);

“Training Contribution Agreements” means the agreements between **Hydro** and **NCN** with respect to the early advances of **NCN’s Training Funds**, dated August 15, 2002 in respect of an advance of up to \$483,220, November 6, 2003 in respect of an advance of up to \$1,137,800 and February 21, 2005 in respect of an advance of up to \$1,322,598;

“Training Initiative” shall have the meaning ascribed thereto in section 8.2 of this **PDA**;

“Training Initiative Funds” shall have the meaning ascribed thereto in section 8.3 of this **PDA**;

“Transition Funding” shall have the meaning ascribed thereto in section 22.1 of this **PDA**;

“Transmission EIS” means the environmental impact statement and documentation, including any supplemental filings and responses to interrogatories, filed with the **CEC** in respect of the **Wuskwatim Transmission Project** in accordance with requirements under federal and provincial legislation and the **Transmission EIS Guidelines**, to inform **Members**, the public and federal and provincial decision-makers about the anticipated environmental effects of the **Wuskwatim Transmission Project**;

“Transmission EIS Guidelines” means the *Guidelines for the Preparation of an Environmental Impact Statement for the Wuskwatim Transmission Project* issued by federal and provincial regulatory authorities dated April 26, 2002;

“Transmission Corridor Easement Agreement” means an easement agreement to be entered into between the **Limited Partnership** and **Hydro** granting an easement to **Hydro** over certain of the **Project Lands** for the purposes of transmission lines as shown on Schedule 6-9, which shall be substantially in the form of the **Transmission Corridor Easement Agreement** attached hereto as Schedule 6-15;

“Transmission Lands Lease” means the agreement to be entered into between the **Limited Partnership** and **Hydro** whereby the **Limited Partnership** leases and agrees to provide access to the **Transmission Leased Lands** to **Hydro**, which shall be substantially in the form of the **Transmission Lands Lease** attached hereto as Schedule 6-12;

“Transmission Leased Lands” means the parcel of land contained within the **Project Lands**, as shown on Schedule 6-9, to be leased to **Hydro** pursuant to the **Transmission Lands Lease**;

“Trustees” mean the trustees, including the corporate trustee, for the time being of the **Taskinigahp Trust**;

“Twenty-Fifth Anniversary Date” shall mean the twenty-fifth anniversary of the **Final Closing Date**;

“Twenty-Fifth Anniversary Sale Right” shall have the meaning ascribed thereto in section 5.11 of this **PDA**;

“WED” means Western Economic Diversification, an agency of the Government of Canada;

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

“Wuskwatim Lands Transfer Agreement” means an agreement to be entered into between **Manitoba** and the **Limited Partnership** on or before the **Initial Closing Date**, irrespective of whether or not the **Initial Closing** occurs, whereby **Manitoba** agrees to transfer the **Project Lands**, including the **Access Road**, to the **Limited Partnership**, subject to certain easements and on the terms and conditions set out therein, which shall be substantially in the form of the **Wuskwatim Lands Transfer Agreement** attached hereto as Schedule 6-11;

“Wuskwatim Letter of Agreement” means a **Project Specific Letter of Agreement** in respect of the **Wuskwatim Project**;

“Wuskwatim PPT Funds” shall have the meaning ascribed thereto in section 8.6 of this **PDA**;

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

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

“Wuskwatim Transmission Development Fund” means a fund to be established by **Hydro** to generate funds to be used for community development purposes by eligible First Nations and small or remote northern communities in the vicinity of the **Wuskwatim Transmission Project**;

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

Article and Section Headings

1.3 The Article and section headings of this **PDA** are for reference and information purposes only and shall not affect in any way the meaning or interpretation of this **PDA**.

Currency

1.4 Except where specifically otherwise indicated, all references to currency and dollar amounts herein shall be deemed to be references to lawful Canadian currency.

Plural, etc.

1.5 Words importing the singular number only shall include the plural, and vice versa, as the context may require. Where the masculine or neuter is used, same shall be interpreted to include the feminine, and vice versa, as the context may require. Words importing persons shall include firms, governments and corporations, as the context may require.

Metric Measure

1.6 Subject to any legislative requirement, in the event of a conflict between metric and Imperial measure, metric measure shall prevail, except where the original document, data or measuring device was in Imperial, in which case the Imperial measure shall prevail. The **Parties** agree that the metric conversion rate to be used for purposes of this **PDA** shall be one foot equals 0.3048 metres and 1 metre equals 3.28084 feet.

Governing Law

1.7 This **PDA** shall be governed by and interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein.

Time of Essence

1.8 The **Parties** acknowledge that for all purposes herein time shall be of the essence.

Entire Agreement

1.9 This **PDA** constitutes the entire agreement between the **Parties** with respect to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions between or among the **Parties**, or any of them, except for the **Confidentiality Agreements**, the **Initial Limited Partnership Agreement** and the **Supplemental Funding Agreement** or unless otherwise stated herein. In particular, the **Agreement in Principle** and the **SOU** are each deemed to be superseded and terminated upon the execution of this **PDA**.

No Other Documents

1.10 In any interpretation of this **PDA**, only the **PDA** itself shall be considered and no other agreement, documents, notes, memoranda, electronic record or other record ("**Other Document**") shall be referred to or considered as evidence of the agreement among the **Parties** unless this **PDA** expressly references such **Other Document** as a document to be so considered.

Schedules

1.11 The following Schedules are attached to this **PDA**:

Schedule 1-1	– Limited Partnership Agreement
Schedule 1-2	– Management Agreement
Schedule 1-3	– Project Financing Agreement
Schedule 1-4	– Construction Agreement
Schedule 1-5	– Power Purchase Agreement
Schedule 1-6	– Operations and Maintenance Agreement
Schedule 1-7	– Interconnection and Operating Agreement
Schedule 1-8	– System Operations and Dispatch Agreement
Schedule 2-1	– <i>Nisichawayasihk Nehethowuk</i> Customary Law Principles
Schedule 3-1	– Construction Advisory Committee Terms of Reference
Schedule 3-2	– Monitoring Advisory Committee Terms of Reference
Schedule 5-1	– TPC Financing Agreement
Schedule 5-2	– NCN Financing Agreement

Schedule 6-1	– Wuskwatim Generating Station, within Manitoba
Schedule 6-2	– Wuskwatim Generating Station, within Nelson House RMA
Schedule 6-3	– Wuskwatim Project Structures
Schedule 6-4	– Description of Primary Structures
Schedule 6-5	– Description of Secondary Structures
Schedule 6-6	– Description of Supporting Infrastructure
Schedule 6-7	– Construction Camp
Schedule 6-8	– Access Road; Borrow Areas; Access Road Transmission Easement Area
Schedule 6-9	– Project Lands; Transmission Leased Lands; Transmission Corridor Easement Area; Communications Tower Easement Area
Schedule 6-10	– CRD Easement Area
Schedule 6-11	– Wuskwatim Lands Transfer Agreement
Schedule 6-11-A	– Quarry Mineral Lease
Schedule 6-12	– Transmission Lands Lease
Schedule 6-13	– Access Road User Agreement
Schedule 6-14	– Access Road Transmission Easement Agreement
Schedule 6-15	– Transmission Corridor Easement Agreement
Schedule 6-16	– Communications Tower Easement Agreement
Schedule 6-17	– Access Management Plan
Schedule 6-18	– Area Affected by Water Level Fluctuations
Schedule 6-19	– Estimated Water Levels on Rivers
Schedule 6-20	– Wuskwatim Lake Water Regime and the Proposed Post Wuskwatim Project Range of Operation
Schedule 6-21	– Wuskwatim Project Flooded Lands
Schedule 7-1	– Routing of Project Local Transmission Facilities
Schedule 7-2	– Transmission Development Fund Eligible Costs
Schedule 8-1	– Revenue Advance Consolidation Agreement
Schedule 9-1	– BNA - Articles 12 and 13
Schedule 9-2	– C/B/N River Area and Boundary for Northern Residents
Schedule 10-1	– Northern Purchasing Policy
Schedule 10-2	– List of Direct Negotiation Contracts
Schedule 11-1	– NCN Adverse Effects Agreement
Schedule 11-2	– Listed Agreements
Schedule 12-1	– Officers and Directors of Hydro
Schedule 12-2	– Regulatory Filings in respect of Hydro
Schedule 12-3	– Chief and Councillors of NCN
Schedule 12-4	– Regulatory Filings in respect of NCN
Schedule 12-5	– Regulatory Filings in respect of the Limited Partnership

Schedule 16-1	– NCN Deed of Assignment
Schedule 16-2	– Taskinigahp Trust Indenture
Schedule 16-3	– Commitment Agreement
Schedule 21-1	– Form of Oath or Undertaking of the Arbitrator
Schedule 25-1	– Referendum Rules
Schedule 26-1	– Certificate of Independent Legal Advice (NCN)
Schedule 26-2	– Certificate of Independent Legal Advice (Hydro)

ARTICLE II

DEVELOPMENT OF THE WUSKWATIM PROJECT

Limited Partnership

2.1 The **General Partner** and **Hydro** formed the **Limited Partnership** pursuant to the **Initial Limited Partnership Agreement** and registered the same as a limited partnership in the Companies Office of Manitoba in accordance with *The Partnership Act* (Manitoba) and *The Business Names Registration Act* (Manitoba) on the 9th day of December, 2004.

Assumption of Rights and Obligations

2.2 As of the **Date of this PDA** all of the rights, interests, responsibilities and obligations of **Hydro** with respect to the **Wuskwatim Project**, all of the representations and undertakings of **Hydro** and the joint representations and undertakings of **Hydro** and **NCN** provided in the **EIS**, as well as the responsibility for obtaining the **Closing Licenses** and all such other regulatory licenses, permits, orders, authorizations and approvals as are required from **Regulatory Authorities** for the construction and operation of the **Wuskwatim Project**, except as otherwise expressly provided for in this **PDA**, are hereby assigned, transferred and set over to the **Limited Partnership** and the **Limited Partnership** hereby accepts and assumes the same. The **Parties** each agree to do all such things and execute and deliver such documents, including without limitation, such assignments, transfers, conveyances, releases, directives, or authorizations, as may be necessary or desirable to give effect to this provision.

Assumption of Costs of the Wuskwatim Project

2.3 On the **Date of this PDA** all of the direct and indirect costs associated with the **Wuskwatim Project** of whatever nature or kind incurred by **Hydro** prior to the **Date of this PDA**, excluding **Revenue Advances** but including, without limitation, the unamortized portion of all planning and engineering studies and licensing costs as at March 31, 2002, all planning and engineering studies and licensing costs incurred after March 31, 2002, all advances of **Wuskwatim PPT Funds** and all negotiating and consultation costs, including all of **NCN's Future Development Costs** reimbursed by **Hydro** in accordance with work plans and budgets

submitted by NCN and approved by **Hydro** from time to time in accordance with established protocols, will be considered costs of the **Wuskwatim Project** and are hereby assigned, transferred and set over to the **Limited Partnership** and the **Limited Partnership** hereby accepts and assumes the same. On and after the **Date of this PDA** all of the direct and indirect costs associated with the **Wuskwatim Project** of whatever nature or kind including, without limitation, all costs, excluding **Revenue Advances**, associated with training related to the **Wuskwatim Project** described in Article VIII, employment opportunities during construction of the **Wuskwatim Project** described in Article IX, business opportunities in connection with the construction of the **Wuskwatim Project** described in Article X, adverse effects of the **Wuskwatim Project** as described in Article XI, and the funding described in Article XXII, will be costs of the **Limited Partnership**. For greater certainty, costs of, or related to, the **Wuskwatim Project** assumed by the **Limited Partnership** pursuant to this **PDA** shall not include any of the costs incurred by **Hydro** in building the **CRD** or allocated by **Hydro** to the operation of the **CRD**. All costs of the **Limited Partnership** will be accounted for in accordance with **Hydro's** accounting policies, as they exist from time to time, as provided in the **Limited Partnership Agreement**.

NCN's Agreement to Support the Wuskwatim Project

2.4 NCN and TPC each agrees with the **Limited Partnership** and with **Hydro** that, subject to and contingent upon the fulfillment of the **Construction Conditions** set forth in Article XV of this **PDA**, for a period of five years from the **Date of this PDA**, NCN and TPC will not object to the development of the **Wuskwatim Project** and will provide reasonable and practical support for the development of the **Wuskwatim Project** in accordance with the provisions of this **PDA** and in compliance with the terms and conditions of the **Closing Licenses** as they may be amended from time to time in the manner provided in this **PDA**.

Undertaking by Limited Partnership and by Hydro

2.5 The **Limited Partnership** and **Hydro** each agrees with NCN and TPC that if the **Limited Partnership** in its sole discretion determines to proceed with the construction of the **Wuskwatim Project** at any time within a period of five years from the **Date of this PDA**, it will do so only in accordance with the provisions of this **PDA** and in compliance with the terms and conditions of the **Closing Licenses**, as they may be amended from time to time in the manner provided in this **PDA**.

Extension of Five Year Period

2.6 Notwithstanding the five year time limitation set forth in sections 2.4 and 2.5, provided that

- (a) the **Limited Partnership** has made a **Substantial Construction Start** within five years of the **Date of this PDA**; and
- (b) **Hydro** has not yet issued a purchase order to the general civil contractor under the **General Civil Contract**;

if a material change of circumstances arises such that the **Limited Partnership** determines that it wishes to halt construction of the **Wuskwatim Project**, then, subject to the terms and conditions of the **Closing Licenses**, the **Limited Partnership** may halt construction of the **Wuskwatim Project** for a period not exceeding five years and the provisions of this **PDA**, including **NCN's** and **TPC's** agreement to support the development of the **Wuskwatim Project** in accordance with the provisions of this **PDA** and the **Limited Partnership's** and **Hydro's** agreement not to build the **Wuskwatim Project** except in accordance with the provisions of this **PDA**, will continue in force and effect during that period.

Commencement of Construction

2.7 Not less than three business days prior to the date on which the **Limited Partnership** intends to commence construction of the **Wuskwatim Project**, or such longer or shorter period as may be agreed to by **Hydro** and **NCN**, the **Limited Partnership** shall provide a **Construction Notice** to **TPC**, with a copy to the **Project Manager** and to **NCN**, certifying that all of the **Construction Conditions** have been satisfied and that the **Limited Partnership** intends to commence construction of the **Wuskwatim Project** on a date not earlier than the date specified in the notice.

Termination of this PDA

2.8 If

- (a) the **Limited Partnership** does not make a **Substantial Construction Start** within five years of the **Date of this PDA**; or
- (b) the **Limited Partnership** makes a **Substantial Construction Start** within five years of the **Date of this PDA**, but halts construction pursuant to section 2.6 of this **PDA** and does not restart construction within five years of the date construction was halted; or
- (c) at any time prior to **Hydro** issuing a purchase order to the general civil contractor under the **General Civil Contract**, the **Limited Partnership** provides notice in writing to **NCN** that it does not wish to proceed with the construction of the **Wuskwatim Project**;

then, subject to the provisions of sections 5.9 and 22.3 of this **PDA**, the provisions of this **PDA** shall terminate and **NCN** and **TPC** are no longer obliged to support the development of the **Wuskwatim Project** in the manner contemplated by this **PDA** or in any other manner and neither the **Limited Partnership** nor **Hydro** is obliged to construct the **Wuskwatim Project** in the manner contemplated by this **PDA** or in any other manner.

NCN's and TPC's On-Going Support

2.9 NCN and TPC each agree with the **Limited Partnership** and with **Hydro** that once the **Wuskwatim Project** is developed as provided in this **PDA**, it will continue to provide such on-going support for the operation of the **Wuskwatim Project** in the manner contemplated by this **PDA** as may be reasonable and practical in the circumstances, subject to the proviso that providing reasonable and practical support does not require NCN or TPC to make any expenditures of any kind, other than such investments in the **Limited Partnership** as TPC may be required to make or may wish to make in its capacity as a limited partner.

Fundamental Features

2.10 The following **Fundamental Features** are features of the **Wuskwatim Project** that are fundamental to NCN's and TPC's decision to agree to not object to and to provide reasonable and practical support for the development of the **Wuskwatim Project**:

- (a) with respect to the construction of the **Wuskwatim Project** that:
 - (i) the location of the construction camp will be in the vicinity of Taskinigup Falls on the north shore of the Burntwood River, as shown in Schedule 6-7;
 - (ii) the **Access Road** to Taskinigup Falls will be what generally is referred to as the "Mile 17 Route", which begins at Provincial Road 391 about 32 kilometres (19.9 miles) west of Thompson and extends 48 kilometres (29.8 miles) southwest from Provincial Road 391 to the **Wuskwatim Project**, as shown in Schedule 6-8; and
 - (iii) the routing of **Project Local Transmission Facilities** will be as shown in Schedule 7-1; and
- (b) with respect to the operation of the **Wuskwatim Project** that:
 - (i) the normal **FSL** for the reservoir created by the **Wuskwatim Project** as measured on Wuskwatim Lake will be 234.0 metres (767.7 feet), as described in section 6.19;
 - (ii) the **Wuskwatim Project** normally will be operated such that water levels on Wuskwatim Lake will be between 233.75 metres (766.9 feet) and 234.0 metres (767.7 feet), except as described in sections 6.31, 6.32 and 6.33;
 - (iii) no new flooding of shoreline lands will occur between the **Notigi Control Structure** and Wuskwatim Falls as a result of the normal operation of the **Wuskwatim Project**;

- (iv) the total area of land to be flooded by the **Wuskwatim Project** will be approximately 0.50 square kilometres (less than 0.2 square miles or about 125 acres) or less;
- (v) the **Wuskwatim Project** will be operated within the constraints of the **Birch Tree Lake Stability Guideline**; and
- (vi) the **Wuskwatim Project** will be operated within the conditions imposed by the **CRD Licence**, as modified from time to time by the **Augmented Flow Program**, as well as the **City of Thompson Agreement**, the **Northern Flood Agreement**, the **1996 NFA Implementation Agreement** and the **Churchill Weir Licence**.

Compliance with Fundamental Construction Features

2.11 Each of the **Limited Partnership** and **Hydro** agrees with each of **NCN** and **TPC** that the **Wuskwatim Project** will be constructed so as to comply with the **Fundamental Construction Features**.

Compliance with Fundamental Operating Features

2.12 Each of the **Limited Partnership** and **Hydro** agrees with each of **NCN** and **TPC** that the **Wuskwatim Project** will be maintained and operated, and controlled, operated and dispatched, so as to comply with the **Fundamental Operating Features**.

Breach of a Fundamental Operating Feature

2.13 Notwithstanding anything contained in this **PDA**, any dispute, difference or claim or apprehended dispute, difference or claim with respect to a **Fundamental Operating Feature**, including as to whether or not there has been a breach of a **Fundamental Operating Feature**, whether by the **Limited Partnership** or by **Hydro** as contractor for the **Limited Partnership**, shall be dealt with in the manner provided in Article 6 of the **NCN Adverse Effects Agreement**.

Hydro Undertaking re CRD License

2.14 **Hydro** agrees that when it makes application to **Manitoba** to obtain a final **CRD License** it will not seek changes to the operating conditions contained in the interim **CRD License** other than the inclusion in the final **CRD License** of the operating conditions contained in the **Augmented Flow Program**.

Acceptance of Closing Licenses

2.15 If **NCN** and **TPC**, acting jointly, believe that any **Closing License** or any of the terms and conditions of any **Closing License**, if implemented or complied with, would result in a material change to a **Fundamental Feature** that **NCN** and **TPC** do not accept, **NCN** and **TPC** shall have fifteen business (15) days from the date of receipt by **NCN** and **TPC** of such **Closing**

License to deliver a Deficiency Notice to the Limited Partnership. If **NCN** and **TPC** do not deliver a **Deficiency Notice** within such fifteen (15) day period, **NCN** and **TPC** shall be deemed to have accepted such **Closing License** and the terms and conditions thereof. If the **Limited Partnership** and **NCN** and **TPC** are unable to agree on whether a **Closing License** or any of the terms and conditions of a **Closing License**, if implemented or complied with, would result in a material change to a **Fundamental Feature**, the matter may be referred to dispute resolution by either **NCN** and **TPC** or the **Limited Partnership** in the manner provided in Article XXI of this **PDA**. If any **Closing License** shall have been issued fifteen (15) business days or more prior to the **Date of this PDA**, then unless **NCN** and **TPC** have delivered a **Deficiency Notice** to the **Limited Partnership** prior to the **Date of this PDA**, **NCN** and **TPC** shall be deemed to have accepted such **Closing License** and the terms and conditions thereof on the **Date of this PDA**.

Subsequent Changes to Closing Licenses

2.16 The **Limited Partnership** agrees that once issued, no change or changes will be sought to a **Closing License** or to any of the terms and conditions of a **Closing License** (other than an extension of the duration or term of a **Closing License**), which, if implemented or complied with, would result in a material change to a **Fundamental Feature** which **NCN** and **TPC**, acting jointly, do not accept. If the **Limited Partnership** wishes to seek a change or changes to a **Closing License** or to any of the terms and conditions of a **Closing License** from the applicable **Regulatory Authority**, the **Limited Partnership** shall give written notice of such proposed change or changes to **NCN** and **TPC** in sufficient detail to enable **NCN** and **TPC** to reach an informed decision in respect of such proposed change or changes. **NCN** and **TPC** shall have forty-five (45) business days from the date they receive such notice from the **Limited Partnership** to deliver a **Deficiency Notice** to the **Limited Partnership**. If **NCN** and **TPC** do not deliver a **Deficiency Notice** within such forty-five (45) day period, **NCN** and **TPC** shall be deemed to have accepted such proposed change or changes. If the **Limited Partnership** and **NCN** and **TPC** are unable to agree on whether any such proposed change or changes would result in a material change to a **Fundamental Feature**, the matter may be referred to dispute resolution by either **NCN** or the **Limited Partnership** in the manner provided in Article XXI of this **PDA**.

Development Structure

2.17 In accordance with and subject to the terms and conditions of this **PDA**, **Hydro**, **NCN**, **TPC** and the **Limited Partnership** have agreed to the development of the **Wuskwatim Project** by the **Limited Partnership**, with the **General Partner**, a wholly-owned subsidiary of **Hydro**, as general partner and **Hydro** and **TPC**, a wholly-owned subsidiary of **NCN**, as limited partners, using agreements between the **Limited Partnership** and **Hydro** to have **Hydro**, among other things, (i) manage the business of the **Limited Partnership**, (ii) finance the debt of the **Wuskwatim Project**, (iii) construct the **Wuskwatim Project**, (iv) purchase the energy generated by the **Wuskwatim Generating Station**, (v) operate and maintain the **Wuskwatim Generating Station**, (vi) connect the **Wuskwatim Generating Station** to the **Integrated Power System** and (vii) control, operate and dispatch the **Wuskwatim Generating Station** as a part of the **Integrated Power System**, all as described in the respective **Hydro Service Agreements**. In addition, the **Limited Partnership**, among other things, has agreed to provide to **NCN** funding

for pre-project training, employment related preferences and the **Direct Negotiation Contracts** described in Articles VIII, IX and X, respectively, of this **PDA**, has agreed to compensate **NCN** for adverse effects of the **Wuskwatim Project** as described in the **NCN Adverse Effects Agreement** and has agreed to provide the funding to **NCN** described in Article XXII of this **PDA** and **Hydro** has agreed to provide loans to **TPC** to finance partially its investment in the **Limited Partnership** and loans to **NCN** to provide a cash flow to **NCN** under certain conditions as described in the respective **NCN Loan Agreements** and has determined to establish the **Wuskwatim Transmission Development Fund**, which will provide certain benefits to **NCN** as described in Article VII of this **PDA**.

Waiver of Conflicts

2.18 The **Parties** have agreed to the development structure described in section 2.17 to provide a vehicle (the **Limited Partnership**) through which **NCN** could invest in the **Wuskwatim Project** (as a limited partner) and receive certain benefits from the development and operation of the **Wuskwatim Project**, while at the same time protecting **NCN's** interests with respect to the **Fundamental Features** of the **Wuskwatim Project**, and a vehicle through which **Hydro** could develop and operate the **Wuskwatim Project** in partnership with **NCN**, while at the same time maintaining control by **Hydro** over critical elements of the development and operation of the **Wuskwatim Project** and the operation of the **Integrated Power System**, subject to and in accordance with the terms of this **PDA**. The **Parties** acknowledge that there are inherent conflicts of interest in the structure they have agreed upon for the development and operation of the **Wuskwatim Project** and they each hereby waive any cause of action or right to object that they might otherwise have against any of the other of them or their respective general partners or their respective officers and directors or the officers and directors of their respective general partners solely by reason of the existence of such conflicts of interest.

Subsequent Hydro Agreements

2.19 **Hydro** and **NCN** have reviewed and have agreed to the terms of each of the **Hydro Service Agreements** prior to signing this **PDA** and **NCN** and **TPC** consent to the **Limited Partnership** and **Hydro** entering into the **Hydro Service Agreements** on the terms set out therein. For so long as **TPC** owns units in the **Limited Partnership**, **Hydro** and **NCN** and **TPC** agree that, except for all agreements contemplated by this **PDA**, **Hydro** will not enter into any agreements with the **Limited Partnership** subsequent to the **Date of this PDA**, the purpose of which is to have **Hydro** provide services to the **Limited Partnership**, without the prior written approval of **NCN**, which approval shall not be unreasonably withheld.

Right of First Refusal

2.20 **NCN** or an **NCN Business** nominated by **NCN** will have a right of first refusal to purchase from the **Limited Partnership** (or from **Hydro** in its capacity as **Project Manager**) any assets acquired by or on behalf of the **Limited Partnership** during the course of construction as part of any temporary facilities as described in section 6.10 of this **PDA**, that **Hydro** as **Project Manager** determines to sell on behalf of the **Limited Partnership**. Such

assets will not be sold to any party for a price less than the price such assets were offered for sale to **NCN** or an **NCN Business** nominated by **NCN**.

Access Management Plan

2.21 The **Limited Partnership** agrees to implement the **Access Management Plan**.

Traditional Knowledge

2.22 The **Limited Partnership** agrees with **NCN** that when considering amendments, if any, to the **Access Management Plan**, or when preparing any environmental protection plan or environmental monitoring plan filed or required to be filed with **Regulatory Authorities** or when considering any amendments to any such plan, it will utilize *Ethinesewin* (traditional knowledge, including the collective wisdom of *Nisichawayasihk Nehethowuk*) and conventional scientific analysis in a manner that is equal and meaningful.

***Nisichawayasi Nehethowuk* Customary Law Principles**

2.23 The **Limited Partnership** acknowledges that it is important to **NCN** that access to the **Nelson House RMA** be restricted, with the objective of, among other things, preserving the cultural, spiritual and heritage values of **NCN** in relation to the area. This is one of the functions of the **Access Management Plan**. In this context, the **Limited Partnership** agrees that as part of the information to be provided to individuals employed on, and to visitors to, the **Wuskwatim Project** construction site, who may have access to the **Nelson House RMA**, the **Limited Partnership** will make available the *Nisichawayasihk Nehethowuk* Customary Law principles attached hereto as Schedule 2-1, so that such individuals may be aware of these principles while within the **Nelson House RMA**.

NCN's Role in On-Going Monitoring

2.24 Pursuant to the **Management Agreement**, **Hydro** will provide certain services to the **Limited Partnership**, including services related to environmental and socio-economic monitoring of the performance of the **Wuskwatim Project**. It is the intent of the **Limited Partnership**, **Hydro** and **NCN** that **Hydro**, as contractor under the **Management Agreement**, will enter into one or more subcontracts with **NCN** or with a **Qualifying NCN Business**, either alone or in a joint venture with others, to provide certain environmental and socio-economic monitoring services to **Hydro**. In negotiating this subcontract or these subcontracts with **NCN** or a **Qualifying NCN Business**, **Hydro** will follow the approach of a **Direct Negotiation** consistent with the principles of the **Northern Purchasing Policy**, provided that costs are reasonable and there is no adverse effect on the schedule required to provide the services or the quality of the services, all as determined by **Hydro**, acting reasonably.

ARTICLE III

THE GENERAL PARTNER AND THE LIMITED PARTNERSHIP

The General Partner

3.1 The **General Partner** is a wholly owned subsidiary of **Hydro**. **Hydro** agrees that it will not use the **General Partner** for any business activity other than to act as general partner of the **Limited Partnership**.

Board of Directors of the General Partner

3.2 The board of directors of the **General Partner** will consist of a minimum of three and a maximum of twelve directors as determined by **Hydro** from time to time in its sole discretion. Subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof on or before the **Initial Closing Date**, **Hydro** agrees with **NCN** to elect to the board of directors of the **General Partner** from time to time such number of **Qualified Nominees** that would provide **NCN** with representation on the board of directors proportionate to **TPC's** equity interest in the **Limited Partnership** at any time, rounded downward to the nearest whole number ("**NCN's Proportionate Share**"), provided that for so long as **TPC** owns units in the **Limited Partnership** the number of **Qualified Nominees** on the board shall not be less than one and that at all times not less than two thirds of the number of directors from time to time shall be the nominees of **Hydro**.

NCN's Nominees to Hydro

3.3 **NCN** will provide **Hydro** with the names of as many **Qualified Nominees** as would represent **NCN's Proportionate Share**, together with a statutory declaration signed by each **Qualified Nominee** declaring that he or she is qualified to act as a director in accordance with the requirements set out in clauses (a) and (b) of the definition of **Qualified Nominee**, within 30 days of the later of **NCN's** representation on the board of directors falling below **NCN's Proportionate Share** and **NCN** receiving a request in writing from **Hydro**.

Election or Resignation of Qualified Nominees

3.4 Subject to section 3.2, **Hydro** will cause such number of **Qualified Nominees** to be elected to the board of directors of the **General Partner** so as to provide **NCN** with **NCN's Proportionate Share**, within 30 days of receiving the information and documentation referred to in section 3.3. If at any time the number of **Qualified Nominees** then elected to the board of directors of the **General Partner** must be reduced in order to maintain **NCN's Proportionate Share**, **Hydro** will notify **NCN** of that fact, and will provide a copy of such notice to all **Qualified Nominees** then elected, and within 30 days of receiving such notice **NCN** will deliver to the **General Partner** the written resignations of such number of **Qualified Nominees** then elected as may be required in order to maintain **NCN's Proportionate Share**. If at any time any **Qualified Nominee** then elected to the board of directors ceases to be qualified to act as a director in accordance with the requirements set out in clauses (a) and (b) of the definition of

Qualified Nominee, upon giving 10 business days written notice to **NCN**, **NCN** will deliver to the **General Partner** the written resignation of such **Qualified Nominee**.

Non-Impairment

3.5 Notwithstanding sections 3.2 to 3.4, if for any reason the number of **Qualified Nominees** elected to the board of directors of the **General Partner** at any time is less than **NCN's Proportionate Share**, that shall not prohibit, prevent or impair in any way the ability of the board of directors of the **General Partner** to conduct its business as the board of directors may deem appropriate from time to time and shall not invalidate or render defective in any way any business conducted at any such meetings, subject to the provisions of the **Limited Partnership Agreement**.

Meetings of the Board of Directors

3.6 Subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof on or before the **Initial Closing Date**, **Hydro** agrees with **NCN** to cause meetings of the board of directors of the **General Partner** to be called at least bi-monthly during the **Construction Period** and at least quarterly thereafter, unless **NCN** and **Hydro** otherwise agree.

Partnership Decisions

3.7 For purposes of greater certainty, it is hereby stated that decisions of the **Limited Partnership** are decisions of the **General Partner** made or taken by its board of directors from time to time.

Limited Partnership Advisory Committees

3.8 The **Limited Partnership** will establish the **Construction Advisory Committee** and the **Monitoring Advisory Committee**. The **Limited Partnership** agrees that for so long as this **PDA** is in effect, it will not amend the **CAC Terms of Reference** or the **MAC Terms of Reference** in such a way that would reduce **NCN's** participation in the respective committees.

ARTICLE IV

FINANCING THE LIMITED PARTNERSHIP

Capital Requirements

4.1 The capital requirements of the **Limited Partnership** shall consist of all costs related to the **Wuskwatim Project** assigned to and assumed by the **Limited Partnership** pursuant to section 2.3 of this **PDA**, together with all costs of every nature or kind incurred directly or indirectly by the **Limited Partnership** following the **Date of this PDA** including, without limitation, all costs related to the construction of the **Wuskwatim Project**, all costs related to the on-going operations of the **Wuskwatim Project**, all expenditures for capital improvements and

all costs that are considered to be costs of the **Wuskwatim Project** pursuant to this **PDA** (the “**Capital Requirements**”).

Funding of Capital Requirements

4.2 Subject to the **Debt Ratio** and except as otherwise contemplated by this **PDA** or by the **Limited Partnership Agreement**, twenty-five per cent (25%) of the **Capital Requirements** will be funded by equity and seventy-five per cent (75%) will be funded by debt. Equity capital will be provided to the **Limited Partnership** by the **Limited Partners** pursuant to and in accordance with the terms and conditions of this **PDA** and the **Limited Partnership Agreement**. Debt capital will be provided to the **Limited Partnership** by **Hydro** pursuant to the **Credit Facilities** as set forth in and in accordance with the terms and conditions of the **Project Financing Agreement**.

Conflicts

4.3 In the event of any conflict between the provisions of the **Limited Partnership Agreement** and the provisions of this Article, the provisions of the **Limited Partnership Agreement** shall prevail. In the event of any conflict between the provisions of the **Project Financing Agreement** and the provisions of this Article, the provisions of the **Project Financing Agreement** shall prevail. For purposes of greater certainty, the fact that one or more of the **Limited Partnership Agreement**, the **Project Financing Agreement**, or this **PDA** is silent on a matter referred to in one or more of the other agreements is not and shall not be considered to be a conflict.

Hydro’s Subscription

4.4 On the **Initial Closing Date**, subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof, **Hydro** will subscribe for such number of additional units in the **Limited Partnership**, at \$1000 per unit, such that, when added together with all of the units owned by **Hydro** prior to such subscription, **Hydro** will own a total of 66.99 % of all of the issued and outstanding units of the **Limited Partnership** after the issue of all units to be subscribed for and issued on the **Initial Closing Date** in accordance with this **PDA**, by executing and delivering to the **Limited Partnership** a **Subscription Agreement**. **Hydro** will pay the aggregate **Subscription Price** for such units of the **Limited Partnership** in cash or by certified cheque on the **Initial Closing Date**.

General Partner’s Subscription

4.5 On the **Initial Closing Date**, subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof, the **General Partner** will subscribe for such number of additional units in the **Limited Partnership**, at \$1000 per unit, such that, when added together with all of the units owned by the **General Partner** prior to such subscription, the **General Partner** will own a total of .01 % of all of the issued and outstanding units of the **Limited Partnership** after the issue of all units to be subscribed for and issued on the **Initial Closing Date** in accordance with this **PDA**, by executing and delivering to the **Limited Partnership** a

Subscription Agreement. The **General Partner** will pay the aggregate **Subscription Price** for such units of the **Limited Partnership** in cash or by certified cheque on the **Initial Closing Date**.

TPC's Subscription

4.6 On the **Initial Closing Date**, subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof, **TPC** will subscribe for such number of units in the **Limited Partnership**, at \$1000 per unit, such that, when the units so subscribed for are issued to **TPC**, **TPC** will own a total of 33 % of all of the issued and outstanding units of the **Limited Partnership** after the issue of all units to be subscribed for and issued on the **Initial Closing Date** in accordance with this **PDA**, by executing and delivering to the **Limited Partnership** a **Subscription Agreement**. **TPC** will pay the aggregate **Subscription Price** for such units of the **Limited Partnership** by the payment of **Approved Funds** in cash or by certified cheque to the **Limited Partnership** on the **Initial Closing Date**.

Additional Capital Contributions

4.7 The **General Partner** may make demand from time to time on the **Limited Partners** in accordance with the **Limited Partnership Agreement** for additional equity capital contributions (“**Cash Call Contributions**”) and the **Limited Partners** and the **General Partner** shall be issued units in the **Limited Partnership** for such **Cash Call Contributions** in accordance with the terms of the **Limited Partnership Agreement**. All **Cash Call Contributions** made by **TPC** must be made in **Approved Funds**.

Debt Capital

4.8 Subject to section 4.9, that portion of the **Capital Requirements** not funded by the **Limited Partners** shall be funded by **Hydro** through the **Credit Facilities** as set forth in and in accordance with the terms and conditions of the **Project Financing Agreement**.

Debt Ratio

4.9 The **Limited Partnership Agreement** provides that the **Limited Partnership** shall maintain a **Debt Ratio** of not greater than 75%, provided that during the first ten years following the **Final Closing Date**, the **Limited Partnership** will allow the **Debt Ratio** to increase to a maximum of 85% so as to reduce the need for cash calls on **Limited Partners** during that period.

Security

4.10 The **Project Financing Agreement** provides that the **Limited Partnership** shall grant to **Hydro** as security for the amounts advanced from time to time pursuant to the **Credit Facilities**, a first fixed and floating charge over all of the assets, rights, interests and entitlements of the **Limited Partnership**, including a mortgage of the **Project Lands**, and shall take all such actions and do all such things as **Hydro** may deem necessary or desirable to better secure the advances

made pursuant to the **Credit Facilities**, all in accordance with the terms and conditions of the **Project Financing Agreement**.

ARTICLE V

FINANCING OF TPC AND NCN

Financing of TPC

5.1 Subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof, **Hydro** has agreed to make financing available to **TPC** in connection with **TPC's** investment in the **Limited Partnership** by providing the **Equity Credit Facility** and the **Cash Call Credit Facility** on the terms and conditions set out in the **TPC Financing Agreement**.

Equity Credit Facility

5.2 Subject to the terms and conditions of the **TPC Financing Agreement**, **TPC** may draw advances under the **Equity Credit Facility** from time to time following the **Initial Closing Date** to fund **TPC's Construction Cash Call Requirements**.

TPC's Final Closing Sale Right

5.3 Pursuant to the **TPC Financing Agreement**, **TPC** has the right (the "**Final Closing Sale Right**"), exercisable on and only on the **Final Closing Date**, to require **Hydro** to purchase all or any portion of its units in the **Limited Partnership** on the terms and conditions set forth in the **TPC Financing Agreement**.

Equity Credit Final Closing Conditions

5.4 Pursuant to the **TPC Financing Agreement**, if on the **Final Closing Date** **TPC** elects not to exercise its **Final Closing Sale Right** in respect of all or any portion of its units in the **Limited Partnership**, then **TPC** must comply as at the **Time of Final Closing** with all of the following conditions (the "**Equity Credit Final Closing Conditions**"):

- (a) **TPC's Invested Cash** at that time must be \$5 million or greater;
- (b) the aggregate of the outstanding principal advances under the **Equity Credit Facility** at that time must not be greater than four times **TPC's Invested Cash** at that time; and
- (c) the aggregate of the outstanding principal advances under the **Equity Credit Facility** at that time must not be greater than 22% of the aggregate of the capital contributions of the **Limited Partners** immediately following that time.

Repayment of Equity Credit Facility on Final Closing

5.5 Pursuant to the **TPC Financing Agreement**, on the **Final Closing Date**, TPC must repay to **Hydro** such portion of the aggregate of the outstanding advances under the **Equity Credit Facility** using **Approved Funds** or sell such of its units in the **Limited Partnership** pursuant to the **Final Sale Closing Right**, as is necessary in order for TPC to comply with the **Equity Credit Final Closing Conditions**, failing which **Hydro** has the right to require TPC to sell to **Hydro** such number of TPC's units in the **Limited Partnership** in satisfaction of such portion of the aggregate outstanding advances under the **Equity Credit Facility** as would be required in order for TPC to be in compliance with the **Equity Credit Final Closing Conditions**, all on the terms and conditions set out in the **TPC Financing Agreement**.

Equity Credit Facility Adjustment Conditions

5.6 Pursuant to the **TPC Financing Agreement**, on the **Adjustment Date**, TPC must comply as at the **Adjustment Date** with all of the following conditions (the "**Equity Credit Facility Adjustment Conditions**"):

- (a) the aggregate of the outstanding principal advances under the **Equity Credit Facility** at that time must not be greater than four times TPC's **Invested Cash** at that time; and
- (b) the aggregate of the outstanding principal advances under the **Equity Credit Facility** at that time must not be greater than 22% of the aggregate of the capital contributions of the **Limited Partners** immediately following that time.

Repayment of Equity Credit Facility on Adjustment Date

5.7 Pursuant to the **TPC Financing Agreement**, on the **Adjustment Date**, TPC must repay to **Hydro** such portion of the aggregate of the outstanding advances under the **Equity Credit Facility** using **Approved Funds**, as is necessary in order for TPC to comply with the **Equity Credit Facility Adjustment Conditions**, failing which **Hydro** has the right to require TPC to sell to **Hydro** such number of TPC's units in the **Limited Partnership** in satisfaction of such portion of the aggregate outstanding advances under the **Equity Credit Facility** as would be required in order for TPC to be in compliance with the **Equity Credit Facility Adjustment Conditions**, all on the terms and conditions set out in the **TPC Financing Agreement**.

Cash Call Credit Facility

5.8 The **TPC Financing Agreement** also provides for the **Cash Call Credit Facility**, pursuant to which **Hydro** will provide loans to TPC to fund TPC's **Operating Cash Call Requirements**, on the terms and conditions set forth in the **TPC Financing Agreement**.

Non-Completion Sale Right

5.9 If the **Initial Closing Conditions** set forth in Article XIII hereof have been satisfied and the **Initial Closing** has occurred but the **Limited Partnership** does not make a **Substantial Construction Start** within five years of the **Date of this PDA**, or makes a **Substantial Construction Start** within five years of the **Date of this PDA** but halts construction pursuant to section 2.6 of this **PDA** and does not restart construction of the **Wuskwatim Project** within five years of the date construction was halted, then **TPC** has the right (the “**Non-Completion Sale Right**”) to require **Hydro** to purchase all but not less than all of **TPC’s** units in the **Limited Partnership** on the terms and conditions set forth in the **TPC Financing Agreement**.

Term Sale Right

5.10 Pursuant to the **TPC Financing Agreement**, **TPC** has the right (the “**Term Sale Right**”), exercisable only once at any time following the **Final Closing Date** and prior to the **Maturity Date**, to require **Hydro** to purchase all but not less than all of **TPC’s** units in the **Limited Partnership** on the terms and conditions set forth in the **TPC Financing Agreement**.

Twenty-Fifth Anniversary Sale Right

5.11 Pursuant to the **TPC Financing Agreement**, **TPC** has the right (the “**Twenty-Fifth Anniversary Sale Right**”), exercisable on and only on the **Twenty-Fifth Anniversary Date**, to require **Hydro** to purchase all but not less than all of **TPC’s** units in the **Limited Partnership** on the terms and conditions set forth in the **TPC Financing Agreement**.

Maturity Date Sale Right

5.12 Pursuant to the **TPC Financing Agreement**, **TPC** has the right (the “**Maturity Date Sale Right**”), exercisable on and only on the **Maturity Date**, to require **Hydro** to purchase all but not less than all of **TPC’s** units in the **Limited Partnership** on the terms and conditions set forth in the **TPC Financing Agreement**.

Financing of NCN

5.13 Subject to the satisfaction of the **Initial Closing Conditions** set forth in Article XIII hereof, **Hydro** has agreed to make financing available to **NCN** in connection with **TPC’s** investment in the **Limited Partnership** by providing the **Dividend Credit Facility** to provide a cash flow to **NCN** based on the amount of **TPC’s Own Invested Cash**, on the terms and conditions set out in the **NCN Financing Agreement**, where it is acknowledged that the reserves established for the **Limited Partnership** pursuant to the **Limited Partnership Agreement** shall not be considered as distributions to the **Limited Partners** for the purposes of determining **NCN’s** eligibility to draw loans under the **Dividend Credit Facility**.

NCN Loan Agreement Costs

5.14 The **Parties** have agreed that until a default occurs under the **NCN Loan Agreements** by **TPC** or **NCN**, as the case may be, all of the costs and expenses of **Hydro** as lender under the **NCN Loan Agreements**, including, without limitation, all legal fees and expenses of **Hydro**, will not be paid by **TPC** and **NCN**, respectively, but rather will be charged to and paid by the **Limited Partnership**. All of **Hydro's** costs and expenses following a default by **TPC** or **NCN**, as the case may be, under the respective **NCN Loan Agreements** will be charged and paid in accordance with the provisions of the **NCN Loan Agreements**.

Loans Non-Recourse

5.15 Pursuant to the **NCN Loan Agreements**, loans to **TPC** pursuant to the **Equity Credit Facility** and the **Cash Call Credit Facility** and loans to **NCN** pursuant to the **Dividend Credit Facility** are to be repaid by **TPC** solely out of distributions to **TPC** from the **Limited Partnership** in the manner and according to the priorities set out in the **NCN Loan Agreements**. The repayment of all such loans is secured by a pledge of and a security interest in **TPC's** units in the **Limited Partnership** and an assignment of **TPC's** distributions from the **Limited Partnership** in favour of **Hydro** and, except to such extent, are without recourse to **TPC** and are without recourse to **NCN**.

Conflicts

5.16 Subject to section 5.14 of this **PDA**, in the event of any conflict between the provisions of the **NCN Loan Agreements** and the provisions of this Article, the provisions of the **NCN Loan Agreements** shall prevail. For purposes of greater certainty, the fact that one or more of the **NCN Loan Agreements** or this **PDA** is silent on a matter referred to in one or more of the other agreements is not and shall not be considered to be a conflict.

ARTICLE VI

DESCRIPTION OF THE PROJECT

Project Description

6.1 The **Wuskwatim Generating Station** will have equipment and structures necessary to maintain upstream water levels within a designated range to produce electricity, which will be transmitted to the **Integrated Power System** via the **Wuskwatim Project Related Transmission Facilities**. This Article and the related **Schedules** describe the anticipated primary structures, the secondary structures and the supporting infrastructure forming part of the **Wuskwatim Project**, as well as the anticipated water regime. The **Wuskwatim Project Related Transmission Facilities** are described in Article VII.

Project Description Subject to Change

6.2 The **Parties** acknowledge that the project description for the **Wuskwatim Project** as it is known and understood as at the **Date of this PDA** is described in this Article and related Schedules. As the final design for the development of the **Wuskwatim Project** progresses and construction occurs, the project description as set forth herein may be changed by the **Limited Partnership** from time to time as the **Limited Partnership**, in its sole discretion, deems appropriate, in accordance with engineering, economic and environmental criteria, as well as requirements of **Regulatory Authorities**, provided that no change which would result in a material change to a **Fundamental Feature** described in section 2.10 of this **PDA** shall be made without the prior written agreement of **NCN** and **TPC**, acting jointly. If the **Limited Partnership** and **NCN** and **TPC** are unable to agree on whether any proposed change or changes would result in a material change to a **Fundamental Feature**, the matter may be referred to dispute resolution by either **NCN** and **TPC**, or the **Limited Partnership**, in the manner provided in Article XXI of this **PDA**.

Location

6.3 The **Wuskwatim Generating Station** and the majority of the **Wuskwatim Project** will be located on, and adjacent to, the Burntwood River at Taskinigup Falls, which is located approximately 1.5 kilometres (0.9 miles) downstream of the natural outlet of Wuskwatim Lake at Wuskwatim Falls, within the **Nelson House RMA**. The geographical location of the **Wuskwatim Generating Station** within **Manitoba** is shown on Schedule 6-1 and the geographical location of the **Wuskwatim Generating Station** within the **Nelson House RMA** is shown on Schedule 6-2.

Components

6.4 The **Wuskwatim Project** will consist of the primary structures and several secondary structures shown on Schedule 6-3, as well as supporting infrastructure.

Primary Structures

6.5 The primary structures will consist of the spillway, the intake/powerhouse/service bay complex, the non-overflow gravity dam, the main dam and north dyke and the transition structures, which are more particularly described in Schedule 6-4.

Secondary Structures

6.6 The anticipated secondary structures will consist of the excavated material placement area and the upstream channel excavation, which are more particularly described in Schedule 6-5.

Production of Electricity

6.7 The system of primary structures and secondary structures collectively will maintain upstream water levels within a designated range as described in this Article VI and the intake/powerhouse/service bay complex will manage the river flows to produce electricity. The **Wuskwatim Generating Station** will be capable of producing as much as 200 megawatts of electric power at any time, but due to the existing **CRD** flow variations from the **Notigi Control Structure**, it will not be able to produce 200 megawatts at all times. The **Wuskwatim Generating Station's** capacity factor (being the ratio of average production to full production) is estimated to be over 85%, which means the average electric power production will be about 180 megawatts. Over a year, the **Wuskwatim Generating Station** typically will be able to produce about 1,550 gigawatt hours of energy.

Supporting Infrastructure

6.8 Various supporting infrastructure is required during the **Wuskwatim Project** construction schedule, some of which will become permanent works. The supporting infrastructure is described in Schedule 6-6 and will include, but is not limited to, the following:

- construction power services;
- initial construction camp and work areas;
- **Access Road**;
- main construction camp;
- work areas;
- service roads;
- cofferdams;
- storage area; and
- borrow areas.

Construction Camp

6.9 The construction camp will be located in the vicinity of Taskinigup Falls on the north shore of the Burntwood River, as shown in Schedule 6-7.

Temporary Facilities

6.10 Some components of the supporting infrastructure consist of temporary facilities that will be decommissioned and cleaned-up wholly or partially following construction. Temporary facilities include the initial construction camp and work area, the main construction camp and work area, the water treatment plan for the camp, temporary offices, as well as components relating to construction power services described in section 6.11 of this **PDA**. Certain of the temporary facilities will be salvaged at the end of the **Construction Period**. All salvage will be credited to the **Limited Partnership**.

Construction Power Services

6.11 The **Construction Agreement** (or the **Interconnection and Operating Agreement**, with respect to the pre-built transmission line referred to in section 7.3) will provide that **Hydro**, as contractor, will design, build, operate and maintain all temporary construction power facilities, including communications facilities, required for the construction of the **Wuskwatim Project**. All costs related to the construction power services will be costs of the **Limited Partnership**. Certain of the facilities as described in the **Construction Agreement** will be salvaged at the end of the **Construction Period**. All salvage will be credited to the **Limited Partnership**.

Access Road

6.12 Access to the **Wuskwatim Project** will be provided by the construction of a 48 kilometre (29.8 mile) long gravel-surfaced all-weather road (the "**Access Road**"). The routing of the **Access Road** will be what generally is referred to as the "Mile 17 Route", which begins at Provincial Road 391 about 32 kilometres (19.9 miles) west of Thompson and extends 48 kilometres (29.8 miles) southwest from Provincial Road 391 to the **Wuskwatim Project**, as shown in Schedule 6-8.

Project Lands

6.13 The **Project Lands** are shown on Schedule 6-9, with the exception of the **Access Road**, which is shown in Schedule 6-8. The **General Partner** will be entitled to be the registered owner of the **Project Lands** in trust as bare trustee for the **Limited Partnership** pursuant to the provisions of the **Wuskwatim Lands Transfer Agreement**. The **Limited Partnership** also will be entitled to use quarry minerals pursuant to the **Quarry Mineral Lease**. Upon title to the **Project Lands** issuing in the name of the **General Partner** in trust as bare trustee for the **Limited Partnership** in accordance with the terms of the **Wuskwatim Lands Transfer Agreement**, in addition to all other matters and things required to be done or performed pursuant to the terms and conditions of the **Wuskwatim Lands Transfer Agreement**, the **Limited Partnership** will enter into the **Transmission Corridor Easement Agreement**, the **Access Road Transmission Easement Agreement**, the **Communications Tower Easement Agreement**, the **Transmission Lands Lease** and the **Access Road User Agreement** with **Hydro**.

Exclusive Right to Use Project Lands

6.14 The **Wuskwatim Lands Transfer Agreement** shall provide that until such time as title to the **Project Lands** issues in the name of the **General Partner** in trust as bare trustee for the **Limited Partnership** in accordance with the provisions of the **Wuskwatim Lands Transfer Agreement**, the **Limited Partnership** shall have the exclusive right to use the **Project Lands** for the purposes of developing the **Wuskwatim Project**, subject to certain easements and on the terms and conditions described therein.

Construction Lands

6.15 Certain of the **Project Lands** are required by the **Limited Partnership** for and during the construction of the **Wuskwatim Project** but will not be required for the ongoing operation of the **Wuskwatim Project** following construction. In accordance with the provisions of the **Wuskwatim Lands Transfer Agreement**, following the **Construction Period** the **Limited Partnership** will identify that portion of the **Project Lands** (the “**Construction Lands**”) that it does not require for the ongoing operation of the **Wuskwatim Project** and, after wholly or partially rehabilitating the **Construction Lands** as required by **Manitoba**, will transfer title to the **Construction Lands** back to **Manitoba**.

Access to the Wuskwatim Project

6.16 Without limiting any rights or obligations of any party under any of the **Wuskwatim Lands Transfer Agreement**, the **Transmission Lands Lease** and any easements or other encumbrances affecting the **Access Road** or the **Project Lands** (including those described in section 6.13), access to the **Wuskwatim Project** and use of the **Access Road**, both during and following the **Construction Period**, will be restricted and controlled in accordance with the **Access Management Plan**.

Datum

6.17 Topographic mapping, geotechnical and water level information for the planning, design and operation of the **Wuskwatim Project** is based upon Geodetic Survey of Canada, Canadian Geodetic Vertical Datum 1928, 1971 Local Adjustment (“**CGVD28 Revision No. 3, 1971**”). The **1996 NFA Implementation Agreement** references Geodetic Survey of Canada, Canadian Geodetic Vertical Datum 1928, 1970 Local Adjustment, which refers to the same elevation as **CGVD28 Revision No. 3, 1971** and for the purposes of this **PDA** will be treated as equivalent.

Water Levels and Water Level Fluctuations

6.18 All water levels referenced in this **PDA** are to be inferred as measured in terms of elevations **ASL, CGVD28 Revision No. 3, 1971**. All water levels and water fluctuation levels referenced in this **PDA** should be read as including the phrase “not including the effects of wind and waves”.

Forebay Level

6.19 The reservoir (also sometimes called the forebay) created by the **Wuskwatim Project** is comprised of two areas, the immediate forebay area and Wuskwatim Lake. The immediate forebay area will be formed between Wuskwatim Falls, the natural outlet of Wuskwatim Lake, and the proposed structures located at the head of Taskinigup Falls. The normal **FSL** for the reservoir will be 234.0 metres (767.7 feet).

Inflow Design Flood

6.20 The inflow design flood, used to determine the appropriate elevations of the primary and secondary structures, has been set to equal the probable maximum flood, which is an estimate of the most severe flood reasonably possible at a particular location. This event has an annual probability of occurrence of less than once in every 10,000 years. During the passage of a probable maximum flood, the Wuskwatim immediate forebay is estimated to surcharge by 1.5 metres (4.9 feet) above the normal FSL, to 235.5 metres (772.6 feet) and the level of Wuskwatim Lake is estimated to rise to 235.6 metres (773.0 feet).

Rated Plant Discharge and Best Gate Discharge

6.21 The rated plant discharge is the maximum outflow that can be used to produce power through the turbines and, for the **Wuskwatim Project**, is anticipated to be 1,100 m³/s (38,846.1 ft³/s). Most of the operation of the **Wuskwatim Generating Station** will occur at the best gate setting for each turbine, which is the operating condition corresponding to the most efficient operation of the turbines. For the **Wuskwatim Project**, the best gate for the plant was selected to be 90 percent of the rated plant discharge.

Number and Type of Turbines

6.22 The **Wuskwatim Project** will utilize three vertical-shaft, fixed-blade propeller type turbines to produce power.

Mode of Operation

6.23 The normal mode of operation for the **Wuskwatim Project** will be what is referred to as a modified run-of-river or 'shaping' mode of operation, with the plant shaping outflows to balance daily in-flows in such a way that the **Wuskwatim Generating Station** will be operating generally at or near its most efficient settings and pass the same daily average flow downstream. Flow changes will be moderated by generally limiting the typical flow change to be the flow from one turbine unit.

Water Regime

6.24 Once constructed, the operation of the **Wuskwatim Project** will result in varying degrees of change in the water levels, flows, water level fluctuations and flow fluctuations from those currently experienced at some locations along the Burntwood River between Early Morning Rapids and the outlet of Birch Tree Lake, in the area shown in Schedule 6-18. The nature and extent of the anticipated changes are described in the following sections of this Article VI.

Operation of the CRD

6.25 The primary purpose of the **CRD** is to divert water from the Churchill River to the Nelson River to supply the hydro-electric generating stations on the lower Nelson River. Natural inflows to the Rat and Burntwood River system combine with the **CRD** regulated flows to move

downstream along the Burntwood River towards Wuskwatim Lake and further downstream eventually discharging into Split Lake. It is anticipated that the typical monthly and seasonal regulation pattern that has been experienced under the operation of the **CRD** will continue. Therefore, it is also anticipated by the **Parties** that the constraints imposed by the **CRD Licence**, as modified by the **Augmented Flow Program**, the **City of Thompson Agreement**, the **NFA**, the **1996 NFA Implementation Agreement** and the **Churchill Weir Licence**, will continue unaffected by the **Wuskwatim Project**.

Water Levels on Rivers

6.26 Water levels along the Rat and Burntwood Rivers from the **Notigi Control Structure** to the City of Thompson during the open water season under constant flow conditions existing prior to the construction of the **Wuskwatim Project** are shown in Schedule 6-19. The estimated water levels for the same route during open water season under constant flow conditions expected to exist after the construction of the **Wuskwatim Project** also are shown in Schedule 6-19.

Upstream of Wuskwatim Lake

6.27 The water regime along the Rat and Burntwood Rivers between the **Notigi Control Structure** and Early Morning Rapids will be unchanged by the **Wuskwatim Project**. Therefore, the water regime described by Article 2 of the **1996 NFA Implementation Agreement** will be unaffected by the **Wuskwatim Project**. Prior to the **Wuskwatim Project**, winter ice conditions experienced upstream of Early Morning Rapids were variable, and that is not expected to change as a result of the **Wuskwatim Project**.

Upstream Water Levels and Range of Operation

6.28 Water levels will rise approximately 7.0 metres (23.0 feet) in the immediate forebay area as a direct result of the **Wuskwatim Project** and will be approximately 0.10 metres (0.3 feet) lower than the water levels on Wuskwatim Lake. A partial ice cover is anticipated to form over the immediate forebay area. However, the site of Wuskwatim Falls existing prior to the **Wuskwatim Project** and the proposed channel improvement excavation area likely will remain open in the winter season due to the slightly higher flow velocity in these areas. Water levels on Wuskwatim Lake will not rise above the previously established high water mark and will be stabilized near the normal **FSL** most of the time. The Wuskwatim Lake water regime existing prior to the **Wuskwatim Project** and the proposed post **Wuskwatim Project** range of operation are shown in Schedule 6-20. Under conditions existing prior to the **Wuskwatim Project** resulting from the operation of the **CRD**, Wuskwatim Lake developed a winter ice cover, and that is not anticipated to change as a result of the operation of the **Wuskwatim Project**. Wuskwatim Lake winter water levels, however, will be slightly higher than winter water levels existing prior to the **Wuskwatim Project**, as the **Wuskwatim Project** will stabilize water levels at Wuskwatim Lake at or near 234.0 metres (767.7 feet).

Upstream Fluctuations

6.29 The water level fluctuations on Wuskwatim Lake and the immediate forebay will depend on the operation of the **Wuskwatim Project**. The monthly and seasonal water level fluctuations illustrated in Schedule 6-20 will be eliminated. The operation of the **Wuskwatim Project** will depend primarily on the inflows entering Wuskwatim Lake, the requirements of the **Integrated Power System** and the plant maintenance schedule. The normal operation of the **Wuskwatim Project** will result in relatively stable upstream water levels. Water levels on Wuskwatim Lake will be at or near the normal FSL of 234.0 metres and normally will be managed within the top 0.25 metres (0.8 feet), from 233.75 metres (766.9 feet) to 234.0 metres (767.7 feet), with typical daily water level fluctuations in the immediate forebay expected to be less than 0.10 metres (0.3 feet).

Downstream Water Levels and Fluctuations

6.30 Monthly and seasonal fluctuations of water levels and flows along the Burntwood River downstream of the **Wuskwatim Project** will be unchanged by the operation of the **Wuskwatim Project** and will continue to result from the operation of the **CRD** and the natural inflows to the Burntwood River. Daily fluctuations of water levels and flows resulting from the operation of the **Wuskwatim Project** will be in addition to the monthly and seasonal variations. Water levels immediately downstream of the **Wuskwatim Project** will depend on the operation of the **Wuskwatim Project** and the operation of the **CRD**. The daily water level fluctuations diminish with distance downstream of the **Wuskwatim Project**. In the powerhouse tailrace area, the open water daily water level fluctuations are estimated to be typically less than 0.45 metres (1.5 feet), ranging up to a maximum of approximately 1.47 metres (4.8 feet). Opegano Lake will experience open water daily water level fluctuations estimated to be typically less than 0.13 metres (0.4 feet), ranging up to a maximum of less than 0.50 metres (1.6 feet). The typical daily water level fluctuations are dampened to the point that they are not noticeable at Birch Tree Lake and would be difficult to distinguish from wind generated waves. Daily water levels at Birch Tree Lake are expected to fluctuate to a maximum of approximately 0.10 metres (0.3 feet) during the open water period and 0.15 metres (0.5 feet) during the ice cover period. Prior to the **Wuskwatim Project**, winter ice conditions experienced downstream of the **Wuskwatim Project** were variable. With operation of the **Wuskwatim Project**, areas that remained open during the winter season prior to the **Wuskwatim Project** are anticipated to continue to remain open, and areas where an ice cover formed prior to the **Wuskwatim Project** are anticipated to continue to form an ice cover.

Abnormal Conditions

6.31 Abnormal conditions are considered to exist when power demand is high in either the **Integrated Power System** or that of Manitoba's neighbours and when river inflows are very low. Up to one metre of reservoir storage has been designated for utilization under abnormal conditions. During these times there will be increased usage of the storage to supplement inflows, drawing Wuskwatim Lake as low as 233.0 metres (764.4 feet). The mode of operation during abnormal conditions will continue to be constrained by the **Birch Tree Lake Stability Guideline**.

Special Conditions

6.32 Special conditions, in which the **Wuskwatim Project** will not be operated in the normal or abnormal modes of operation, would include major unit overhauls (expected to occur approximately once every 25 years) and the management of flood flows. During these conditions, depending on the inflows into Wuskwatim Lake, the flow may be directed over the spillway (in the case of major unit overhauls) or the water levels at Wuskwatim Lake could rise above 234.0 metres (767.7) (in the case of flood flows). As an example, for a flood flow with a probability of occurrence of once every 10,000 years, the water level at Wuskwatim Lake is estimated to rise to approximately 235.6 metres (773.0 feet). The mode of operation during special operating conditions will continue to be constrained by the **Birch Tree Lake Stability Guideline**.

Emergency Conditions

6.33 Emergency conditions are considered to exist under infrequent outflow conditions, such as when one turbine unit is operating and there is a coincident failure of **Hydro's HVDC** transmission system, or when the flow passing the **Wuskwatim Generating Station** needs to be halted temporarily, for example, due to a downstream accident. In these conditions the flow change would not be limited to the flow from one turbine unit. During these conditions, water levels at Wuskwatim Lake could rise above 234.0 metres (767.7 feet) and could fall below 233.0 metres (764.4 feet) and the flow passing the **Wuskwatim Generating Station** could fall to zero. Such conditions could result in greater changes in the tailwater levels than would be seen normally. All practical measures will be taken to keep within the **Birch Tree Lake Stability Guideline** when an emergency mode of operation is required at the **Wuskwatim Project**.

Flooded Land and Clearing

6.34 The **Wuskwatim Project** operation is expected to cause no new flooding of shoreline lands between the **Notigi Control Structure** and Wuskwatim Falls. The total area of land to be flooded by the **Wuskwatim Project** is estimated to be less than 0.50 square kilometres (less than 0.2 square miles or about 125 acres), as shown in Schedule 6-21. The land to be flooded by the **Wuskwatim Project** will be cleared. Downstream of the **Wuskwatim Project**, no shoreline is anticipated to require clearing or other shoreline protection measures.

ARTICLE VII

WUSKWATIM PROJECT RELATED TRANSMISSION MATTERS

General

7.1 **Wuskwatim Project Related Transmission Facilities** are expressly excluded from the definition of the **Wuskwatim Project** and will not form part of the assets of the **Limited Partnership**. However, the **Wuskwatim Project Related Transmission Facilities** are

necessary in order to provide construction power to the **Wuskwatim Project** and to connect the **Wuskwatim Project** to the **Integrated Power System**. For licensing purposes, the **Wuskwatim Transmission Project** has been treated as a separate project and a separate environmental impact statement, the **Transmission EIS**, has been filed with **Manitoba Conservation**. The **Parties** acknowledge that the costs of the **Wuskwatim Project Related Transmission Facilities** and the **Wuskwatim Transmission Development Fund** will be charged by **Hydro** to the **Limited Partnership** in accordance with the provisions of the **Interconnection and Operating Agreement**.

NCN and TPC Support for the Wuskwatim Transmission Project

7.2 Subject to section 7.7 of this **PDA** and the **Limited Partnership** proceeding with construction of the **Wuskwatim Project** in accordance with the terms of this **PDA**, each of **NCN** and **TPC** agrees not to object to, and agrees to provide such support for, the construction of the **Wuskwatim Transmission Project** as may be reasonable and practical in the circumstances, subject to the proviso that providing reasonable and practical support does not require **NCN** and **TPC** to make any expenditures of any kind, other than such investments in the **Limited Partnership** as **TPC** may be required to make or may wish to make in its capacity as a **Limited Partner**. For greater certainty, it is understood that the **Wuskwatim Transmission Project** (other than those components of the **Wuskwatim Transmission Project** which would have been built in any event but were accelerated because of the **Wuskwatim Project**) will not proceed if the **Wuskwatim Project** does not proceed in accordance with this **PDA** and in that event **NCN** will have no obligation to support the **Wuskwatim Transmission Project**.

Construction Power

7.3 As part of the construction power services referred to in section 6.11 of this **PDA**, **Hydro** will provide electrical power for the construction of the **Wuskwatim Project** from Thompson by connecting into an existing 230 kV transmission line between Kelsey and Thompson at the site of the proposed new **Birchtree Station** and by **Hydro** pre-building (pursuant to the **Interconnection and Operating Agreement**) the **Wuskwatim Transmission Project's** permanent 230 kV transmission line from the **Birchtree Station** to the **Wuskwatim Project**. **Hydro** also will construct, on behalf of the **Limited Partnership**, on **Project Lands**, a temporary construction power substation and construction power distribution lines as well as communications facilities.

Permanent Transmission Facilities

7.4 The permanent portion of the **Wuskwatim Project Related Transmission Facilities** will consist primarily of the construction of a new 230 kV switching station on the **Transmission Leased Lands**, the connecting pre-built 230 kV transmission line to the new **Birchtree Station** south of the Thompson urban area, two new 230 kV transmission lines between the **Wuskwatim** switching station and the existing **Herblet Lake Station** at **Snow Lake** and one new 230 kV transmission line between the **Herblet Lake Station** and the **Rall's Island Station** at **The Pas** and communications facilities. In addition, modifications will be required to the existing transmission stations at **Herblet Lake** and **Rall's Island**.

Delivery of Power to Hydro

7.5 Pursuant to the **Power Purchase Agreement**, the **Limited Partnership** will deliver the electrical power generated by the **Wuskwatim Project** to **Hydro** at the point of interconnection, being the point on the output (high) side of the step-up transformer to be located on the tailrace deck of the **Wuskwatim Generating Station** at which each of the three generators connects to one of the three 230 kV transmission lines running from the **Wuskwatim Generating Station** to the new 230 kV switching station.

Routing of Project Local Transmission Facilities

7.6 **NCN** participated in the route evaluation and selection in respect of the **Project Local Transmission Facilities**. The routing of the **Project Local Transmission Facilities** will be as set out in Schedule 7-1.

No Material Changes to Routing

7.7 No material changes will be made to the proposed routing and location of the **Project Local Transmission Facilities** set out in section 2.10(a) (iii) without the prior written agreement of **NCN**. However, it is agreed that adjustments to the routing as may be required by circumstances encountered in the field during construction will not be considered a material change, as long as such adjustments do not take the routing outside of the established right-of-way.

Employment and Business Opportunities

7.8 There will be employment opportunities available to **Members** and business opportunities available to **NCN** and **Qualifying NCN Businesses** in connection with the **Project Local Transmission Facilities**, in accordance with the **Northern Purchasing Policy**.

Wuskwatim Transmission Development Fund

7.9 **Hydro** will establish the **Wuskwatim Transmission Development Fund**, on or before the start of construction of the **Wuskwatim Transmission Project**, to generate funds to be used for community development purposes by eligible First Nations and small or remote northern communities in the vicinity of the **Wuskwatim Transmission Project**.

Amount of the Wuskwatim Transmission Development Fund

7.10 The **Wuskwatim Transmission Development Fund** will be notional in nature, equal to the value of 5% of the eligible capital costs of the **Wuskwatim Project Related Transmission Facilities** as of the date of final completion. The **Wuskwatim Transmission Development Fund** will be created notionally in increments over the course of construction of the **Wuskwatim Transmission Project**. Commencing in the calendar year in which clearing begins for the **Wuskwatim Transmission Project**, and continuing annually thereafter until final completion, **Hydro** will set aside notionally an amount equal to 5% of the eligible capital costs of the

Wuskwatim Project Related Transmission Facilities incurred in the year. Capital costs eligible for inclusion will be the actual capital costs of the permanent portion of the **Wuskwatim Project Related Transmission Facilities** described in section 7.4 which are constructed on newly reserved lands or rights of way, as described in Schedule 7-2 (subject to such additions or deletions thereto as may be agreed to by **Hydro** and **NCN**).

For greater certainty, the actual capital costs shall include:

- (a) the interest amount paid by the **Limited Partnership** to **Hydro** pursuant to the **Project Financing Agreement** on Advances (as defined in the **Project Financing Agreement**) or portions thereof used by the **Limited Partnership** to fund those costs which the **Limited Partnership** is obligated to pay to **Hydro** pursuant to the **Interconnection and Operating Agreement** in respect of the eligible Wuskwatim 230 kV transmission components described in Schedule 7-2; and
- (b) the interest amount determined according to Hydro's interest capitalization methodology as may be made or established from time to time on the eligible Herblet Lake-The Pas 230 kV transmission project components described in Schedule 7-2.

Annual Distributions

7.11 The aggregate amount available for annual distribution from the **Wuskwatim Transmission Development Fund** will be calculated using a rate of return equal to the Consumer Price Index (Manitoba All Items) plus 3%, applied to the notional total amount of the **Wuskwatim Transmission Development Fund**.

Timing of Annual Distributions

7.12 The first annual distribution from the **Wuskwatim Transmission Development Fund** will occur within a reasonable time following the year-end for the calendar year in which the **Wuskwatim Transmission Development Fund** was first notionally established, based on the notional total amount of the **Wuskwatim Transmission Development Fund** as at that year-end, and will continue annually thereafter for the life of the **Wuskwatim Project Related Transmission Facilities**.

Use of Distributions

7.13 All distributions received by **NCN** from the **Wuskwatim Transmission Development Fund** will be used to support **NCN's** resource use activities as more specifically set out in the **Taskinigahp Trust Indenture** and will not be used for per capita distributions to community members.

Annual Reports

7.14 NCN will provide or will cause to be provided to **Hydro**, at NCN's cost, not later than 12 months from the date on which a distribution is received from the **Wuskwatim Transmission Development Fund**, a copy of the written report required pursuant to section 20.1 (c) of the **Taskinigahp Trust Indenture** describing how such distribution was used. The written report must be provided to **Hydro** prior to NCN being eligible to receive any subsequent distributions.

Additional Information

7.15 If **Hydro**, acting reasonably, has reason to believe that distributions received by NCN from the **Wuskwatim Transmission Development Fund** were not used as provided in section 7.13, then prior to NCN being eligible to receive any subsequent distributions from the **Wuskwatim Transmission Development Fund**, NCN will provide or will cause to be provided to **Hydro** a full accounting as to how NCN has used the distributions it has received to date and will propose and implement measures satisfactory to **Hydro** to address any reasonable concerns.

Evaluations

7.16 For so long as NCN is receiving distributions from the **Wuskwatim Transmission Development Fund**, NCN agrees that **Hydro**, upon consultation with NCN, may conduct evaluations from time to time, as a cost of the **Wuskwatim Transmission Project**, to determine the success of any project, program or activities that are being supported in whole or in part by distributions from the **Wuskwatim Transmission Development Fund** (collectively, a "**Program**"). NCN agrees to co-operate with **Hydro** in the conduct of any evaluation by collecting and providing, at NCN's cost, such information as may reasonably be requested by **Hydro** in relation to any **Program**.

NCN Responsibility

7.17 NCN shall be responsible for obtaining, prior to the commencement of any **Program**, all permits, licences, consents and other authorizations that may be necessary or desirable in order to create or establish such **Program** and NCN shall comply with all such permits, licences, consents and other authorizations and with all laws, by-laws and regulations applicable thereto or in connection therewith. NCN shall be solely responsible for and will make any and all deductions or remittances which may be required by law with regard to any **Program**.

Distributions to NCN

7.18 Subject to the foregoing sections 7.9 to 7.17, **Hydro** and NCN agree that NCN's share of the distributions available annually from the **Wuskwatim Transmission Development Fund** will be 44%.

Relationship

7.19 The creation by **Hydro** of the **Wuskwatim Transmission Development Fund** and the payment by **Hydro** of distributions from the **Wuskwatim Transmission Development Fund** to **NCN** from time to time as described in this Article does not create the relationship of partners, joint venturers, employer and employee or principal and agent between **NCN** and **Hydro** or between any of the other's officers, employees or agents in respect of the **Wuskwatim Transmission Development Fund**. **Hydro** is solely a funder under the **Wuskwatim Transmission Development Fund**.

ARTICLE VIII

PRE-PROJECT TRAINING

Training for Hydro Northern Projects

8.1 In addition to the **Wuskwatim Project**, **Hydro** has been planning for the development of the **Keeyask Project**. In recognition of the importance of providing pre-project training opportunities for **Northern Aboriginals** related to jobs in the construction and operation of the **Wuskwatim Project** and the **Keeyask Project**, **Hydro** committed up to \$5 million of **Wuskwatim Project** funds for pre-project training for **Members**, **NAC Residents** and other **Northern Aboriginals** for jobs on the **Wuskwatim Project** and the **Keeyask Project** and up to \$15 million of **Keeyask Project** funds for pre-project training for members of the **Keeyask Cree Nations** and other **Northern Aboriginals** for jobs on the **Wuskwatim Project** and the **Keeyask Project**.

The Training Initiative

8.2 Subsequent to the commitment of funds described in section 8.1, **Hydro**, **Manitoba** and the **Aboriginal Training Partners** sought additional pre-project training funding and made a written proposal to **HRSDC**, under the Aboriginal Skills and Employment Program, for the Hydro Northern Training and Employment Initiative (the "**Training Initiative**") to facilitate the training of **Northern Aboriginals** to take advantage of employment on both the **Wuskwatim Project** and the **Keeyask Project**.

Funding for the Training Initiative

8.3 Subject to the provisions of the **Contribution Agreements**, **HRSDC**, **Hydro**, **Manitoba** and the **Aboriginal Training Partners**, as well as **WED** and **INAC**, agreed to fund the **Training Initiative** to a total amount of \$62 million (the "**Training Initiative Funds**"), as follows:

(a)	HRSDC	\$22 million
(b)	Hydro	\$20 million
(c)	Manitoba	\$10 million
(d)	WED	\$5 million

(e)	INAC	\$3.3 million
(f)	Aboriginal Training Partners	\$1.7 million

Although the **Training Initiative Funds** consists of \$62 million, the \$1.7 million contributed by the **Aboriginal Training Partners** was an in-kind contribution, such that there is only \$60.3 million of **Training Initiative Funds** available for distribution. **Hydro's** contribution of \$20 million consists of \$5 million of **Wuskwatim Project** funds and \$15 million of **Keeyask Project** funds, as described in section 8.1 of this **PDA**.

Training Delivery

8.4 Each of the **Aboriginal Training Partners** is responsible for the delivery of training to **Northern Aboriginals** in the manner described in the proposal for the **Training Initiative** and in their respective **Contribution Sub-Agreements**. In the case of **NCN**, it is responsible for the delivery of training to **Members** and **NAC Residents** in the manner described in the proposal for the **Training Initiative**, **NCN's Contribution Sub-Agreements** and the **Training Contribution Agreements**. **MKO** and **MMF** are responsible for the delivery of training to other **Northern Aboriginals** in the manner set forth in their respective **Contribution Sub-Agreements**.

Training Consortium

8.5 **Hydro**, **Manitoba** and the **Aboriginal Training Partners** established the **Training Consortium** for the purposes of entering into **Contribution Agreements** with **HRSDC**, **WED**, **Hydro** and **Manitoba** to receive and use the **Training Initiative Funds** in the manner described in such **Contribution Agreements**, entering into **Contribution Sub-Agreements** with the **Aboriginal Training Partners** to provide **Training Initiative Funds** to the **Aboriginal Training Partners** for the delivery of training in the manner described in such **Contribution Sub-Agreements** and managing the **Training Initiative** in accordance with the **Contribution Agreements**, the **Contribution Sub-Agreements** and the **Consortium Members' Agreement**.

Training Initiative Funds for the Wuskwatim Project

8.6 Subject to section 8.7 of this **PDA**, in accordance with the **Contribution Agreements** and subject to the terms thereof, a total of \$15 million of **Training Initiative Funds** have been allocated for pre-project training for **Members**, **NAC Residents** and **Northern Aboriginals**, other than **Members** and **NAC Residents**, for jobs on the **Wuskwatim Project** and the **Keeyask Project** (the "**Wuskwatim PPT Funds**"). A total of seventy-five per cent (75%) of this amount, or \$11,250,000, will comprise **NCN's Training Funds** for the training of **Members** and **NAC Residents** in the manner set out in the **Training Contribution Agreements** or in **NCN's Contribution Sub-Agreements**, as the case may be, and twenty-five per cent (25%) of this amount, or \$3,750,000, has been or will be used or made available for the training of **Northern Aboriginals** other than **Members** and **NAC Residents**.

Early Advances of NCN's Training Funds

8.7 In order to provide funding for the training of **Members** and **NAC Residents** prior to the establishment of the **Training Initiative** and the **Training Consortium**,

- (a) **Hydro**, on behalf of the **Limited Partnership**, provided NCN with early advances of **NCN's Training Funds** in the aggregate sum of \$1,385,400 on the terms and conditions set forth in the **Training Contribution Agreements**;
- (b) **Manitoba** provided NCN with early advances of **NCN's Training Funds** in the aggregate sum of \$1,143,665 on the terms and conditions set forth in certain agreements made between **Manitoba** and NCN;
- (c) **INAC** provided NCN with early advances of **NCN's Training Funds** in the aggregate sum of \$3,260,000 on the terms and conditions set forth in certain agreements made between **INAC** and NCN; and
- (d) **WED** provided NCN with early advances of **NCN's Training Funds** in the aggregate sum of \$500,000 on the terms and conditions set forth in certain agreements made between **WED** and NCN.

NCN acknowledges and agrees that all funds advanced to NCN described in this section, in the total amount of \$6,289,065, were intended to be and shall be considered as advances of **NCN's Training Funds**, being NCN's share of **Wuskwatim PPT Funds**.

Training Delivery for the Wuskwatim Project

8.8 **NCN's Training Funds** are to be used by NCN for the pre-project training of **Members** and **NAC Residents** for jobs on the **Wuskwatim Project** and the **Keeyask Project**. The training of **Members** and **NAC Residents** will be community-based and will be delivered by NCN through ATEC as described in section 8.9.

ATEC

8.9 The training of **Members** and **NAC Residents** will be delivered by NCN through ATEC. ATEC will implement NCN's multi-year training plan and will prepare annual implementation plans setting out the specific budgetary requirements, anticipated outcomes for the upcoming year and other matters outlined in the **NCN Contribution Sub-Agreements** or in the **Training Contribution Agreements**, as the case may be. NCN will remain responsible, jointly and severally with ATEC, for all matters pertaining to the pre-project training of **Members** and **NAC Residents**.

No Additional Access to Training Initiative Funds

8.10 The access of **NCN, Members** or **NAC Residents** to **Training Initiative Funds** shall be limited to **NCN's Training Funds** and, subject to section 8.13, none of **NCN, Members** or **NAC Residents** will be entitled to access **Training Initiative Funds** allocated for pre-project training for members of the **Keeyask Cree Nations** or for other **Northern Aboriginals**.

Supplemental Training Funds

8.11 Pursuant to the **Supplemental Funding Agreement**, **NCN** and **Hydro** agreed that if **NCN** exceeds a **Designated Trades** training target of 24 new trainees, in addition to **NCN's Training Funds**, an additional amount of up to \$2,000,000 of **Supplemental Training Funds** will be made available to **NCN** in the manner and subject to the conditions set forth in the **Supplemental Funding Agreement**. **NCN, Hydro** and the **Limited Partnership** agree that in accordance with the provisions of section 2.2 and 2.3 of this **PDA**, on and to be effective from the **Date of this PDA**, all of the obligations of **Hydro** under the **Supplemental Funding Agreement** are assigned by **Hydro** to the **Limited Partnership** and the **Limited Partnership** hereby accepts and assumes the same.

Revenue Advances

8.12 Prior to the **Date of this PDA**, **Hydro** provided or agreed to provide **NCN** with a number of advances of funds, in a total amount not to exceed \$5,685,000 (the "**Revenue Advances**") to be used for activities related to **ATEC**, on the terms and conditions described in the **Revenue Advance Consolidation Agreement**. **NCN, TPC** and **Hydro** agree to enter into the **Revenue Advance Consolidation Agreement** on or before the **Initial Closing Date**, irrespective of whether or not the **Initial Closing** occurs.

Continuation of Training

8.13 **NCN** agrees that once an individual who at that time was a **Member** commences pre-project training with **NCN** through a program or programs delivered using **NCN's Training Funds**, **NCN** shall not discontinue such individual's training solely by reason of such individual becoming a member of another First Nation, unless such training is assumed by **MKO** as part of **MKO's** training programs for other **Northern Aboriginals**. **NCN** will not be required to provide training using **NCN's Training Funds** for individuals who are not **Members**, other than those individuals who were enrolled in a recognized **NCN** training program for the **Wuskwatim Project** at the time such individual ceased to be a **Member**.

ARTICLE IX

EMPLOYMENT OPPORTUNITIES DURING CONSTRUCTION

BNA and Wuskwatim Letter of Agreement

9.1 The **Wuskwatim Project** will be constructed under the auspices of the **BNA**, which recently has been renegotiated. **Hydro** and **NCN** consulted and agreed on proposals to amend certain provisions of the **BNA** that were of particular importance to **NCN** in relation to the **Wuskwatim Project** and an **NCN** representative was present at the negotiating meetings with the **AHC**. Changes to the **BNA** specific to the **Wuskwatim Project** are reflected in the **Wuskwatim Letter of Agreement**.

Employment Preference

9.2 **NCN** and **Hydro** agreed, and it is now reflected in Article 12.1.1.3 of the **BNA**, a copy of which Article is reproduced as Schedule 9-1 hereto, that the first preference for employment on all major northern hydro-electric development projects covered by the **BNA**, which includes all hydro-electric generation and converter station projects undertaken by **Hydro** (or by **Hydro** in partnership with others) on the Burntwood or Nelson Rivers for which construction has commenced prior to 2016, will be offered to job qualified **Northern Aboriginals** who are registered with **MAET** and who reside in the **Churchill/Burntwood/Nelson River Area**.

No Amendments to Preference

9.3 Subject to section 9.4, **Hydro** will do all things necessary to ensure that the **HPMA** does not amend Article 12.1.1.3 of the **BNA**, including the definitions applicable to Article 12.1.1.3, nor will **Hydro** do anything that would permit the **HPMA** to use a **Project Specific Letter of Agreement** to amend Article 12.1.1.3 of the **BNA**, including the definitions applicable to Article 12.1.1.3, during its term, which ends on December 31, 2017.

Exception

9.4 Notwithstanding section 9.3, **Hydro** will cause the **HPMA** to seek to amend Article 12.1.1.3 of the **BNA**, or the definitions applicable to Article 12.1.1.3, by way of a **Project Specific Letter of Agreement** for the **Keeyask Project**, to provide that all members of the **Keeyask Cree Nations** who are registered with **MAET** shall, for the purposes of the **Keeyask Project**, be deemed to be **Northern Aboriginals** who reside in the **Churchill/Burntwood/Nelson River Area**, although **Hydro** recognizes that the **AHC** may not agree to such amendment. **Hydro** agrees to notify **NCN** at the time it seeks any such amendment that it is doing so and agrees to provide periodic status reports on the progress of such negotiations and to advise **NCN** of the outcome of such negotiations when they have been concluded.

Job Referral

9.5 NCN agrees that MAET will be the primary job placement and referral agency for employment on the **Wuskwatim Project**. However, ATEC will be the referral agency for **Members** to MAET with respect to employment on the **Wuskwatim Project**. As vacancies and new positions become available, ATEC will refer job-qualified **Members** who are ready, willing and able to fill these positions to MAET.

Responsibilities of MAET

9.6 The **Limited Partnership** will ensure that in providing the placement and referral services referenced in section 9.5, MAET's responsibilities will include, without limitation, the following:

- (a) recruiting and screening of candidates;
- (b) developing a candidate database;
- (c) receiving and registering job orders from contractors;
- (d) matching job orders to the candidate database;
- (e) applying the preference provisions in the **BNA**;
- (f) verifying preference status, particularly whether candidates meet the applicable residency tests;
- (g) verifying qualifications, including reference checks; and
- (h) making candidate referrals to contractors based on the foregoing.

Contractor May Reject Candidate on Reasonable Grounds

9.7 Notwithstanding the employment preference set out in the **BNA** and described in section 9.2, NCN acknowledges that the contractor retains the right to reject, on reasonable grounds, any candidate referred by MAET, including referrals based on referrals from ATEC to MAET. Reasonable grounds include, but are not limited to the following:

- (a) the candidate is not job qualified;
- (b) the candidate was previously employed on the **Wuskwatim Project** and resigned within 30 calendar days of being hired or rehired or was discharged during the 12 month period preceding the job order; and

- (c) the candidate was previously employed on the **Wuskwatim Project** and received more than two written warnings or a suspension for inappropriate workplace-related conduct or activities.

Advisory Committee on Employment

9.8 The **Limited Partnership** and **Hydro** agree that **Hydro**, in its capacity as **Project Manager**, will cause to be established an **Advisory Committee on Employment** comprised of representatives of **Hydro**, **NCN**, **MAET**, **HPMA** (including contractor members), and the **AHC**. The role of the **Advisory Committee on Employment** will be to monitor and address concerns about the referral and hiring process, including job orders containing qualifications alleged to be unreasonable. If any dispute arises with respect to unreasonable job orders (including job qualifications) or inappropriate referrals, a written complaint shall be made to the **Advisory Committee on Employment** and copied to the **Project Manager**. The **Advisory Committee on Employment** shall be advisory in nature only, and, if a contractor does not accept its recommendations, the matter shall be referred to the **Project Manager** for resolution. Nothing in this section shall be taken as interfering with or superseding the grievance/arbitration provisions of the **BNA**.

Final Authority Over Specifications

9.9 **Hydro**, as **Project Manager**, will have the ultimate control and responsibility for the preparation of all of the tender specifications for the construction, operation and maintenance of the **Wuskwatim Project**.

Tender Conditions

9.10 **Hydro** and **NCN** have agreed that the following conditions will be required in the tender specifications for all contracts on the **Wuskwatim Project** other than contracts relating primarily to the supply of goods:

- (a) the **BNA** will form part of the tender specifications;
- (b) the tender special conditions will specify that the contractors will set reasonable requirements for accreditation, skill and experience necessary for the particular work to be performed;
- (c) the tender special conditions will require designated contractors to provide on-the-job training to workers in specified trades; and
- (d) contractors will be required to submit the detail of their on-the-job training program in their tender submission.

Reports to NCN on Employment of Members

9.11 **Hydro** agrees to provide reports to **NCN** from time to time containing employment statistics in respect of the **Wuskwatim Project**, if possible not only on an aggregate basis but also by job classification, including reports with respect to the employment of **Members**, containing such information and with such frequency as may be agreed to between **Hydro** and **NCN**, both acting reasonably.

Employment of Members by Hydro

9.12 A number of **Hydro's** collective agreements contain provisions aimed at facilitating equitable participation of qualified Aboriginal people in **Hydro's** workforce in stable long-term employment. **Hydro** and **NCN** have been working together and agree to continue to work together in an effort to increase opportunities for **Members** to be employed by **Hydro**, not only in its on-going generation and transmission operations, but also for positions where **Hydro** directly employs persons to work on the **Wuskwatim Project**. **NCN** acknowledges that, where appropriate, **Hydro** will be required to consult with bargaining agents under its various collective agreements prior to determining such opportunities.

ARTICLE X

BUSINESS OPPORTUNITIES DURING CONSTRUCTION

General

10.1 The **Limited Partnership** will contract with **Hydro** in its capacity as **Project Manager** to complete the planning and to design, engineer, construct and commission the **Wuskwatim Project** in accordance with the provisions of the **Construction Agreement**. **Hydro** will in turn sub-contract much of the work to other contractors, from which contracting opportunities will be available for **Qualifying NCN Businesses**.

Direct Negotiation with Qualifying NCN Businesses

10.2 **Hydro** and **NCN** agree that **Hydro**, by **Direct Negotiation** in accordance with the **Northern Purchasing Policy**, will negotiate directly with the **Qualifying NCN Businesses** identified in Schedule 10-2 to have such **Qualifying NCN Businesses** perform the applicable **Direct Negotiation Contracts** identified in Schedule 10-2, provided that costs are reasonable and there is no adverse affect on the schedule for the construction of the **Wuskwatim Project** or the quality of the delivered goods and services, all as determined by **Hydro**, acting reasonably.

Award of Direct Negotiation Contracts

10.3 Subject to the **Limited Partnership** issuing a **Construction Notice** and proceeding with the construction of the **Wuskwatim Project**, **Hydro** agrees that on or after the commencement of construction it will enter into each of the **Direct Negotiation Contracts** identified in Schedule

10-2 in respect of which **Hydro** and the applicable **Qualifying NCN Business** have signed a cover agreement.

ARTICLE XI

ADVERSE EFFECTS

Wuskwatim Project Adverse Effects on NCN

11.1 **NCN** and **Hydro** have worked closely together in the planning and design of the **Wuskwatim Project** in an effort to avoid, prevent, minimize and mitigate, to the extent reasonably possible, any adverse effects which might otherwise have arisen as a consequence of the location, design, construction, development, operation and maintenance of the **Wuskwatim Project**. Nonetheless, the **Wuskwatim Project** will cause some adverse effects to **NCN** or to **Members**, for which the **Limited Partnership** will pay compensation as provided in the **NCN Adverse Effects Agreement**.

Wuskwatim Transmission Project Adverse Effects on NCN

11.2 **NCN** and **Hydro** have worked closely together in the planning and design of the **Wuskwatim Transmission Project**, and in particular the **Project Local Transmission Facilities**, in an effort to avoid, prevent, minimize and mitigate, to the extent reasonably possible, any adverse effects which might otherwise have arisen as a consequence of the routing, construction, development, operation and maintenance of the **Project Local Transmission Facilities**. The siting of the route, the timing of construction and other aspects of the **Project Local Transmission Facilities** have been considered carefully to avoid direct impacts and loss. Nonetheless, the **Wuskwatim Transmission Project** will cause some adverse effects to **NCN** or to **Members**, for which **Hydro** will pay compensation as provided in the **NCN Adverse Effects Agreement**. All compensation payable to **NCN** or to **Members** related to the **Wuskwatim Project Transmission** will be paid by **Hydro** and will be a cost of the **Wuskwatim Transmission Project**.

NCN Adverse Effects Agreement

11.3 **Hydro**, **NCN** and the **Limited Partnership** agree to enter into the **NCN Adverse Effects Agreement** among themselves and the **Taskinigahp Trust** on or before the **Initial Closing Date**, irrespective of whether or not the **Initial Closing** occurs.

Potential Unanticipated Adverse Effects on Others

11.4 Adverse effects arising from the **Wuskwatim Project**, including potential unanticipated adverse effects, are the responsibility of the **Limited Partnership**. The **Limited Partnership** is of the view, based on extensive consultation, *Ethinesewin* (traditional knowledge, including the collective wisdom of *Nisichawayasihk Nehethowuk*) and conventional scientific analysis (which extensive review and analysis was documented in the **EIS**) and the results of the public hearings

and review processes conducted by **Regulatory Authorities**, that the development of the **Wuskwatim Project** will not result in any significant environmental impact or cause adverse effects on parties with interests on the Rat, Burntwood or Nelson River systems downstream of Birchtree Lake or upstream of First Rapids. Nonetheless, it will be necessary for the **Limited Partnership** to conduct such on-going monitoring as it considers necessary or desirable or as may be required by **Regulatory Authorities** in order to confirm its view and the predictions in the **EIS**. If on-going monitoring subsequently discloses unanticipated environmental impacts or adverse effects arising from the **Wuskwatim Project**, then, subject to the provisions of the **NCN Adverse Effects Agreement**, the **Limited Partnership** will have the responsibility to take steps to address any such impacts or effects.

Other Agreements

11.5 **Hydro** has a number of existing contractual commitments with third parties, including First Nations and communities located on the waterways influenced by the **Wuskwatim Project** both upstream and downstream of the **Wuskwatim Project**, as described in Schedule 11-2, requiring **Hydro** to follow certain processes to address issues and concerns related to potential environmental impacts or adverse effects arising from future developments, which may include the **Wuskwatim Project**. The **Limited Partnership** may enter into agreements with such First Nations or communities with respect to on-going monitoring and communication relative to potential unanticipated environmental impacts or adverse effects of the **Wuskwatim Project**. Costs incurred in following such processes or entering into such agreements, to the extent they relate to the **Wuskwatim Project**, will be costs of the **Wuskwatim Project**.

ARTICLE XII

REPRESENTATIONS AND WARRANTIES

General Representations and Warranties of Hydro

12.1 **Hydro** represents and warrants to each of **NCN**, **TPC** and the **Limited Partnership** as follows and acknowledges that each of **NCN**, **TPC** and the **Limited Partnership** are relying on such representations and warranties in entering into this **PDA**:

- (a) **Hydro** is a corporation duly incorporated and organized and validly subsisting under the laws of the Manitoba and has the corporate power and authority to own or lease its property, to develop the **Wuskwatim Project**, to operate the **Integrated Power System** and to enter into this **PDA** and to perform its obligations hereunder;
- (b) this **PDA** has been duly authorized, executed and delivered by **Hydro** and is a legal, valid and binding obligation of **Hydro** enforceable against **Hydro** by each of **NCN**, **TPC** and the **Limited Partnership** in accordance with its 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 **PDA**, at the discretion of the **Arbitrator**;

- (c) no person, firm or corporation (other than **Hydro**, **NCN** through **TPC** and the **General Partner**) has any written or oral agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option for the development of the **Wuskwatim Project**;
- (d) no person, firm or corporation (other than **Hydro**, **NCN** through **TPC** and the **General Partner**) has any agreement or option nor any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement for the purchase, subscription, allotment or issuance of any of the unissued units or other securities of the **Limited Partnership**;
- (e) subject to obtaining all of the **Closing Licenses** and all other licenses, permits, orders, authorizations and approvals required for the transactions contemplated by this **PDA** as described in Schedule 12-2, the execution and delivery of this **PDA** by **Hydro** and the consummation of the transactions herein provided for by **Hydro** will not result in:
 - (i) 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,
 - (A) any contract to which **Hydro** is a party or by which it, or any of its property, is bound, except as described in Schedule 11-2;
 - (B) any provision of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) of **Hydro**;
 - (C) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over **Hydro**;
 - (D) any license, permit, approval, consent or authorization held by **Hydro** or necessary to the operation of the **Wuskwatim Project**;
or
 - (E) any applicable law, statute, ordinance, regulation or rule, including, without limitation, the **Hydro Act**;
 - or,
 - (ii) the creation or imposition of any encumbrance on any investment transaction or any of the property or assets of **Hydro**, except as contemplated by this **PDA**;

- (f) **Hydro** has or will have complied with all laws, statutes, ordinances, regulations, rules, judgments, decrees or orders applicable to the **Wuskwatim Project** or to **Hydro** in relation to the **Wuskwatim Project**;
- (g) Schedule 12-1 sets forth the names and titles of all of the officers and directors of **Hydro**;
- (h) **Hydro** is a resident of Canada for the purposes of the *Income Tax Act* (Canada); and
- (i) there is no requirement for **Hydro** to make any filing with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of any government regulatory authority as a condition to the lawful consummation by **Hydro** of the transactions contemplated by this **PDA**, except as described in Schedule 12-2.

General Representations and Warranties of NCN

12.2 **NCN** represents and warrants to each of **Hydro** and the **Limited Partnership** as follows and acknowledges that each of **Hydro** and the **Limited Partnership** are relying on such representations and warranties in entering into this **PDA**:

- (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**, to develop the **Wuskwatim Project**, to enter into this **PDA** and to perform its obligations hereunder;
- (b) this **PDA** has been duly authorized, executed and delivered by **NCN** and is a legal, valid and binding obligation of **NCN** enforceable against **NCN** by each of **Hydro** and the **Limited Partnership** in accordance with its 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 **PDA**, at the discretion of the **Arbitrator**;
- (c) no person, firm or corporation has any agreement or option nor any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement for the purchase of any of the unissued units or other securities of the **Limited Partnership** to be acquired by **TPC** pursuant to this **PDA**;
- (d) subject to obtaining all of the **Closing Licenses** and all other licenses, permits, orders, authorizations and approvals required for the transactions contemplated by this **PDA** and subject to **NCN** obtaining the authorizations and approvals described in Schedule 12-4, the execution and delivery of this **PDA** by **NCN** and the consummation by **NCN** of the transactions herein provided for will not result in:

- (i) 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 **NCN** under:
 - (A) any contract to which **NCN** is a party or by which it, or any of its property, is bound;
 - (B) any by-laws or resolutions of **Chief and Council** or of **Members** (or of any committee thereof, respectively) of **NCN**;
 - (C) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over **NCN**;
 - (D) any license, permit, approval, consent or authorization held or issued by **NCN** or necessary to the investment by **TPC** in the **Limited Partnership**; or
 - (E) any applicable law, statute, ordinance, regulation or rule including, without limitation, the *Indian Act* (Canada), or any regulations thereunder;

or,

- (ii) the creation or imposition of any encumbrance on any investment transaction or any of the property or assets of **NCN**;
- (e) **NCN** has or will have complied with all laws, statutes, ordinances, regulations, rules, judgments, decrees or orders applicable to **NCN** in relation to the **Wuskwatim Project**;
- (f) Schedule 12-3 sets forth the names and titles of the **Chief** and each **Councillor** of **NCN**;
- (g) there is no requirement for **NCN** 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 **NCN** of the transactions contemplated by this **PDA** except as described in Schedule 12-4; and
- (h) **NCN** has used all reasonable efforts to provide **NAC Residents** with such information as may reasonably be necessary to enable them to be informed as to opportunities for them to participate in the pre-project training in respect of the **Wuskwatim Project** and the **Keeyask Project** described in Article VIII hereof, **NAC Residents** have had the opportunity to participate in such training and **NCN** has not discriminated in any way against **NAC Residents**, as a class of individuals, in the provision of pre-project training.

General Representations and Warranties of TPC

12.3 **TPC** represents and warrants to each of **Hydro** and the **Limited Partnership** as follows and acknowledges that each of **Hydro** and the **Limited Partnership** are relying on such representations and warranties in entering into this **PDA**:

- (a) **TPC** 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 **PDA** and to perform its obligations hereunder;
- (b) this **PDA** has been duly authorized, executed and delivered by **TPC** and is a legal, valid and binding obligation of **TPC** enforceable against **TPC** by each of **Hydro** and the **Limited Partnership** in accordance with its 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 **PDA**, at the discretion of the **Arbitrator**;
- (c) no person, firm or corporation other than **Hydro** has any agreement or option nor any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement for the purchase of any of the unissued units or other securities of the **Limited Partnership** to be acquired by **TPC** pursuant to this **PDA**;
- (d) subject to obtaining all of the **Closing Licenses** and all other licenses, permits, orders, authorizations and approvals required for the transactions contemplated by this **PDA** and subject to **TPC** making such filings as may be required under applicable securities laws, regulations and rules, the execution and delivery of this **PDA** by **TPC** and the consummation by **TPC** of the transactions herein provided for will not result in:
 - (i) 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 **TPC** under:
 - (A) any contract to which **TPC** is a party or by which it, or any of its property, is bound;
 - (B) any provision of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) or shareholders of **TPC**;
 - (C) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over **TPC**;

- (D) any license, permit, approval, consent or authorization held by **TPC** or necessary to an investment in the **Limited Partnership**; or
- (E) any applicable law, statute, ordinance, regulation or rule;

or,

- (ii) the creation or imposition of any encumbrance on any investment transaction or any of the property or assets of **TPC**, except in favour of **Hydro** as provided in this **PDA**;
- (e) **TPC** has or will have complied with all laws, statutes, ordinances, regulations, rules, judgments, decrees or orders applicable to **TPC** in relation to the **Wuskwatim Project**;
- (g) **TPC** is a resident of **Canada** for the purposes of the *Income Tax Act* (Canada); and
- (h) there is no requirement for **TPC** 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 **TPC** of the transactions contemplated by this **PDA** except for such filings as may be required under applicable securities laws, regulations and rules.

General Representations and Warranties of the Limited Partnership

12.4 The **Limited Partnership** represents and warrants to each of **NCN**, **TPC** and **Hydro** as follows and acknowledges that each of **NCN**, **TPC** and **Hydro** are relying on such representations and warranties in entering into this **PDA**:

- (a) the **Limited Partnership** is a limited partnership duly formed, validly existing and in good standing under the laws of Manitoba and has all requisite power and authority to beneficially own, operate or lease the properties owned or to be owned, operated or leased by the **Limited Partnership**, to carry on its business as contemplated by the **Limited Partnership Agreement** and to enter into this **PDA** and perform its obligations hereunder;
- (b) this **PDA** has been duly authorized, executed and delivered by the **General Partner** for and on behalf of the **Limited Partnership** and is a legal, valid and binding obligation of the **Limited Partnership** and of the **General Partner** enforceable against each of them by each of **NCN**, **TPC** and **Hydro** in accordance with its 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 **PDA**, at the discretion of the **Arbitrator**;

- (c) no person, firm or corporation (other than **NCN** through **TPC**, **Hydro** or the **General Partner**) has any agreement or option nor any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement for the purchase, subscription, allotment or issuance of any of the unissued units or other securities of the **Limited Partnership**;
- (d) subject to obtaining all of the **Closing Licenses** and all other licenses, permits, orders, authorizations and approvals required for the transactions contemplated by this **PDA** as described in Schedule 12-5, the execution and delivery of this **PDA** by the **General Partner** for and on behalf of the **Limited Partnership** and the consummation of the transactions herein provided for by the **Limited Partnership** will not result in:
 - (i) the breach or violation of any provision of or constitute a default under or conflict with or cause the acceleration of any obligation of the **Limited Partnership** under:
 - (A) any contract to which the **Limited Partnership** is a party or by which it, or any of its property or any property of the **General Partner**, is bound, except as described in Schedule 11-2;
 - (B) any provision of the **Initial Limited Partnership Agreement** or of the by-laws or resolutions of the **General Partner** in its capacity as general partner or of the **Limited Partners** in their capacity as limited partners;
 - (C) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over the **General Partner** or the **Limited Partnership**;
 - (D) any license, permit, approval, consent or authorization held by the **Limited Partnership** or the **General Partner** on behalf of the **Limited Partnership** or necessary to the ownership or operation of the **Wuskwatim Project**; or
 - (E) any applicable law, statute, ordinance, regulation or rule;

or,

- (ii) the creation or imposition of any encumbrance on any investment transaction or any of the property or assets of the **Limited Partnership**;

- (e) the **Limited Partnership** has or will have complied with all laws, statutes, ordinances, regulations, rules, judgments, decrees or orders applicable to the **Wuskwatim Project** or to the **Limited Partnership** in relation to the **Wuskwatim Project**;
- (f) the **Limited Partnership** is a Canadian partnership within the meaning of the *Income Tax Act* (Canada);
- (g) there is no requirement for the **Limited Partnership** 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 the **Limited Partnership** of the transactions contemplated by this **PDA**, except as described in Schedule 12-5; and
- (h) it shall comply with the applicable securities laws, regulations and rules and the applicable requirements of any securities commission or similar regulatory authority having jurisdiction.

General Representations and Warranties of the General Partner

12.5 The **General Partner** represents and warrants to each of **TPC** and **Hydro** as follows and acknowledges that each of **TPC** and **Hydro** are relying on such representations and warranties in entering into this **PDA**:

- (a) the **General Partner** is a corporation duly incorporated and validly subsisting under the laws of Manitoba and has the corporate power and authority to enter into this **PDA** and the **Limited Partnership Agreement** and perform its obligations thereunder and, on behalf of the **Limited Partnership**, to enter into this **PDA** and to perform its obligations hereunder;
- (b) all necessary corporate proceedings have been taken by it to authorize the execution, delivery and performance of the **Initial Limited Partnership Agreement**, the **Limited Partnership Agreement** and this **PDA**;
- (c) it has, and shall continue to have, the capacity and authority to act as the general partner and to perform its obligations under the **Limited Partnership Agreement** and that such obligations do not and shall not conflict with or constitute a default under its Articles of Incorporation, by-laws or any agreement by which it is bound or to which it is a party;
- (d) it shall devote and shall cause its officers to devote such of their time, attention and facilities as may be necessary for the full, proper and efficient administration of the affairs of the **Limited Partnership**;
- (e) it shall comply with the applicable requirements of any securities commission or similar regulatory authority having jurisdiction; and

- (f) there is no unanimous shareholder agreement or declaration which restricts the powers of the directors of the **General Partner** to manage the business and affairs of the **General Partner**.

Additional Representations and Warranties of the Limited Partnership with respect to the Limited Partnership Transaction

12.6 The **Limited Partnership** represents and warrants to each of **TPC** and **Hydro**, as at the **Time of Initial Closing**, as follows and acknowledges that each of **TPC** and **Hydro** are relying on such representations and warranties in connection with their subscription for units of interest in the **Limited Partnership**:

- (a) the **Limited Partnership** has furnished to it a complete and correct copy of the **Initial Limited Partnership Agreement**, which has not been amended and is in full force and effect. The **Limited Partnership** is not in violation of any of the provisions of the **Initial Limited Partnership Agreement**, except where such violation would not individually, or in the aggregate, have a material adverse effect on the **Limited Partnership**;
- (b) neither the execution, delivery and performance of the **Subscription Agreements**, nor the consummation of the transactions contemplated thereby (i) conflicts with or violates the **Initial Limited Partnership Agreement** or will conflict with or will violate the **Limited Partnership Agreement**; or (ii) results in the creation or imposition of any encumbrance upon the property or assets of the **Limited Partnership**;
- (c) immediately prior to giving effect to the transactions to occur at **Initial Closing**, **Hydro** is the registered owner of 99.9% and the **General Partner** is the registered owner of 0.01% of all of the issued and outstanding units in the **Limited Partnership** and **Hydro** and the **General Partner** are, and have been, the only registered owners of units in the **Limited Partnership**;
- (d) the audited financial statements of the **Limited Partnership** certified by the Chairman of the **General Partner**, copies of which have been delivered to it, fairly represent in all material respects the financial position of the **Limited Partnership** and capital accounts immediately prior to the **Initial Closing Date**, other than the costs of the **Wuskwatim Project** being assumed by the **Limited Partnership** pursuant to section 2.3 of this **PDA**;
- (e) the **Limited Partnership** has not distributed any assets to any of its limited partners whether by way of redemption, return of capital, distribution or otherwise;
- (f) as of the **Initial Closing Date** the **Limited Partnership** has no material liabilities contingent or otherwise other than as described in the audited financial statements

certified by the Chairman of the **General Partner**, copies of which have been delivered to it, and other than the costs of the **Wuskwatim Project** being assumed by the **Limited Partnership** pursuant to section 2.3 of this **PDA**;

- (g) there are no corporations, partnerships, joint ventures, associations or other entities in which the **Limited Partnership** owns a recorded or beneficial direct or indirect equity, or other interest or any right, contingent or otherwise to acquire the same or in which the **Limited Partnership** otherwise participates;
- (h) except as referred to in this **PDA**, the **Limited Partnership** has not granted any person any right or entered into any agreement or understanding (whether by option, warrant, call, commitment, conversion, plan or otherwise), fixed or contingent, with respect to the acquisition, purchase, sale, transfer, assignment, creation or issuance of any interest in the **Limited Partnership**;
- (i) the **Limited Partnership** has not engaged in any business or activity of any kind other than the business and activities expressly contemplated and permitted by the **Limited Partnership Agreement**;
- (j) upon signing the **Wuskwatim Lands Transfer Agreement**, the **General Partner** will be entitled to be the registered owner of the **Project Lands** in trust as bare trustee for the **Limited Partnership**, subject to and in accordance with the provisions of the **Wuskwatim Lands Transfer Agreement** and subject to such encumbrances, easements or other restrictions set forth in the **Wuskwatim Lands Transfer Agreement** and in this **PDA**; and
- (k) the **Limited Partnership** does not own and does not have any agreements of any nature to acquire, directly or indirectly, any property or assets, real or personal, tangible or intangible, other than in respect of the **Wuskwatim Project**.

Additional Representations and Warranties of TPC and Hydro with respect to the Limited Partnership Transaction

12.7 Each of **TPC** and **Hydro** represents and warrants to the **Limited Partnership**, as at the **Time of Initial Closing**, as follows and acknowledges that the **Limited Partnership** is relying on such representations and warranties in connection with **TPC's** and **Hydro's** respective subscription for units in the **Limited Partnership**:

- (a) no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the **Limited Partnership Transaction** based upon arrangements made by or on behalf of it;
- (b) it understands and agrees that there may be a limited market or no market for the sale or transfer of its units in the **Limited Partnership**, that even if there were a market, sales or transfers of its units in the **Limited Partnership** are restricted by the provisions of the **Limited Partnership Agreement** and that even if permitted

under the **Limited Partnership Agreement**, sales or transfers of its units in the **Limited Partnership**, or any portion thereof, may be restricted under the provisions of the Securities Regulation to *The Securities Act* (Manitoba); TPC and Hydro understand that the **Limited Partnership** is under no obligation to assist TPC or Hydro in complying with *The Securities Act* (Manitoba) or any other applicable securities law;

- (c) it acknowledges that it has not received from the **Limited Partnership** an “Offering Memorandum” within the meaning of section 89 of the Securities Regulation to *The Securities Act* (Manitoba);
- (d) it is acquiring its units in the **Limited Partnership** voluntarily for its own account as principal for investment purposes and not with a view to or for the resale, distribution or fractionalization thereof in whole or in part;
- (e) no other person other than, in the case of TPC, NCN, has any direct or indirect beneficial interest in its interest in the **Limited Partnership**; and
- (f) it is not a non-Canadian as such term is defined in the *Investment Canada Act* (Canada).

Survival of General Representations and Warranties of the Parties

12.8 The representations and warranties of the respective **Parties** contained in sections 12.1 to 12.5 of this **PDA** or any agreement, instrument, certificate or other document executed or delivered pursuant thereto (except as otherwise provided herein or therein) shall survive the **Initial Closing**, the **Final Closing** and the **Adjustment Date** and notwithstanding such closings or dates, nor any investigation made by or on behalf of any **Party**, shall continue in full force and effect without limitation of time, subject only to applicable limitation periods imposed by law.

Survival of Additional Representations and Warranties of Limited Partnership

12.9 The covenants, representations and warranties of the **Limited Partnership** contained in section 12.6 of this **PDA** or any agreement, instrument, certificate or other document executed or delivered pursuant thereto (except as otherwise provided herein or therein) shall survive the **Initial Closing**, the **Final Closing** and the **Adjustment Date** and notwithstanding such closings or dates, nor any investigation made by or on behalf of **Hydro** or **TPC**, shall continue in full force and effect for the benefit of **Hydro** and **TPC** until the first anniversary of the **Adjustment Date**, provided that a claim for any breach of any of the representations and warranties contained in section 12.6 or any agreement, instrument, certificate or other document executed or delivered pursuant thereto involving fraud or fraudulent misrepresentation may be made at any time following the **Adjustment Date**, subject only to applicable limitation periods imposed by law.

Survival of Additional Representations and Warranties of Hydro and TPC

12.10 The covenants, representations and warranties of **Hydro** and **TPC** contained in section 12.7 of this **PDA** or any agreement, instrument, certificate or other document executed or delivered pursuant thereto (except as otherwise provided herein or therein) shall survive the **Initial Closing**, the **Final Closing** and the **Adjustment Date** and notwithstanding such closings or dates, nor any investigation made by or on behalf of the **Limited Partnership**, shall continue in full force and effect for the benefit of the **Limited Partnership** until the first anniversary of the **Adjustment Date**, provided that a claim for any breach of any of the representations and warranties contained in section 12.7 or any agreement, instrument, certificate or other document executed or delivered pursuant thereto involving fraud or fraudulent misrepresentation may be made at any time following the **Adjustment Date**, subject only to applicable limitation periods imposed by law.

ARTICLE XIII

INITIAL CLOSING CONDITIONS

Conditions Precedent to Initial Closing in Favour of Hydro

13.1 The obligations of **Hydro** related to the **Limited Partnership Transaction** shall be subject to and contingent upon the fulfillment of the following conditions precedent to the satisfaction of **Hydro**, as certified or waived in writing by **Hydro** on the **Initial Closing Date**:

- (a) **Representations and Warranties.** All of the representations and warranties of each of **NCN**, **TPC** and the **Limited Partnership** contained in this **PDA** shall be true and correct in all material respects at the **Time of Initial Closing** with the same force and effect as if such representations and warranties were made at and as of such time, and certificates of **Chief and Council** and the President of **TPC** dated the **Initial Closing Date** to that effect, shall have been delivered to **Hydro**, such certificates to be in form and substance satisfactory to **Hydro** acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions to be complied with or performed by each of **NCN**, **TPC** and the **Limited Partnership** at or before the **Time of Initial Closing** shall have been complied with or performed in all material respects, and certificates of the **Chief and Council**, the President of **TPC** and the Chairman of the **General Partner** (on its own behalf and as general partner of the **Limited Partnership**) dated the **Initial Closing Date** to that effect, shall have been delivered to **Hydro**, such certificates to be in form and substance satisfactory to **Hydro** acting reasonably;
- (c) **Subscription.** **TPC** shall have duly executed and delivered a **Subscription Agreement** together with its **Subscription Price** with respect thereto and shall have duly executed and delivered the **Limited Partnership Agreement**, all in the manner described in this **PDA**;

- (d) **Hydro Service Agreements.** Each of the **Hydro Service Agreements** shall have been duly executed and delivered by the respective parties thereto, except for the **Interconnection and Operating Agreement**, which shall have been assigned to the **Limited Partnership**;
- (e) **NCN Loan Agreements.** Each of the **NCN Loan Agreements** shall have been duly executed and delivered by the respective parties thereto;
- (f) **Other Agreements.** Each of the **NCN Adverse Effects Agreement**, the **Revenue Advance Consolidation Agreement**, the **NCN Deed of Assignment**, the **Taskinigahp Trust Indenture** and the **Commitment Agreement** and each of the **Project Lands Agreements** shall have been duly executed and delivered by the respective parties thereto;
- (g) **Legal Matters.** All documentation relating to the due authorization and completion of the transactions contemplated hereunder and all actions and proceedings required to be taken on or prior to the **Initial Closing** in connection with the performance by each of the **Parties** of their obligations under this **PDA** shall have been completed to the satisfaction of **Hydro** and its counsel acting reasonably and **Hydro** shall have received copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation of such transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to **Hydro** and its counsel, acting reasonably;
- (h) **No Orders or Injunctions.** There shall have been no order or preliminary or permanent injunction entered in any action or proceeding in any court of competent jurisdiction or governmental authority (which has jurisdiction over the enforcement of the applicable laws) making illegal or prohibiting the consummation of the **Limited Partnership Transaction**; and
- (i) **Legal Opinions.** Counsel to **NCN** and **TPC** each shall have delivered to **Hydro** a favourable opinion as to power, authority, capacity and due execution only, in form and substance satisfactory to counsel for **Hydro**, acting reasonably.

Remedy to Hydro for Non-Performance

13.2 If any of the conditions contained in section 13.1 (other than a condition to be performed by the **Limited Partnership** or the **General Partner** that is within the control of **Hydro**) shall not be performed or fulfilled at or prior to the **Initial Closing Date** to the satisfaction of **Hydro**, acting reasonably, or waived by **Hydro** in whole or in part, **Hydro** may terminate its obligations to **NCN**, **TPC** and the **Limited Partnership** in connection with the **Limited Partnership Transaction**, including, without limitation, the obligation of **Hydro** to finance the **Limited Partnership** described in Article IV hereof and the obligation of **Hydro** to finance **TPC** and **NCN** described in Article V hereof, without prejudice to any claims it may have for breach of

covenant, representation or warranty but, for greater certainty, it is hereby stated that the remainder of this PDA shall continue in full force and effect.

Conditions Precedent to Initial Closing in Favour of NCN and TPC

13.3 The obligations of NCN and TPC related to the **Limited Partnership Transaction** shall be subject to and contingent upon the fulfillment of the following conditions precedent to the satisfaction of NCN and TPC, as certified or waived in writing by NCN and TPC on the **Initial Closing Date**:

- (a) **Representations and Warranties.** All of the representations and warranties of each of **Hydro**, the **Limited Partnership** and the **General Partner** contained in this PDA shall be true and correct in all material respects at the **Time of Initial Closing** with the same force and effect as if such representations and warranties were made at and as of such time, and certificates of the President of **Hydro** and the Chairman of the **General Partner** (on its own behalf and as general partner of the **Limited Partnership**) dated the **Initial Closing Date** to that effect, shall have been delivered to NCN and TPC, such certificates to be in form and substance satisfactory to NCN and TPC acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions to be complied with or performed by each of **Hydro**, the **Limited Partnership** and the **General Partner** at or before the **Time of Initial Closing** shall have been complied with or performed in all material respects, and certificates of the President of **Hydro** and the Chairman of the **General Partner** (on its own behalf and as general partner of the **Limited Partnership**) dated the **Initial Closing Date** to that effect, shall have been delivered to NCN and TPC, such certificates to be in form and substance satisfactory to NCN and TPC acting reasonably;
- (c) **Subscription.** **Hydro** shall have duly executed and delivered a **Subscription Agreement** together with its **Subscription Price** with respect thereto and **Hydro**, the **General Partner** and the **Limited Partnership** shall have duly executed and delivered the **Limited Partnership Agreement**, all in the manner described in this PDA;
- (d) **Hydro Service Agreements.** Each of the **Hydro Service Agreements** shall have been duly executed and delivered by the respective parties thereto, except for the **Interconnection and Operating Agreement**, which shall have been assigned to the **Limited Partnership**;
- (e) **NCN Loan Agreements.** Each of the **NCN Loan Agreements** shall have been duly executed and delivered by the respective parties thereto;
- (f) **Other Agreements.** Each of the **NCN Adverse Effects Agreement**, the **Revenue Advance Consolidation Agreement**, the **NCN Deed of Assignment**, the **Taskinighp Trust Indenture** and the **Commitment Agreement** and each of

the **Project Lands Agreements** shall have been duly executed and delivered by the respective parties thereto;

- (g) **Advance Tax Ruling.** NCN shall have received the **Advance Tax Ruling** from the Canada Revenue Agency substantially in the form set out in NCN's **Ruling Request**;
- (h) **No Orders or Injunctions.** There shall have been no order or preliminary or permanent injunction entered in any action or proceeding in any court of competent jurisdiction or governmental authority (which has jurisdiction over the enforcement of the applicable laws) making illegal or prohibiting the consummation of the **Limited Partnership Transaction**;
- (i) **Legal Matters.** All documentation relating to the due authorization and completion of the transactions contemplated hereunder and all actions and proceedings required to be taken on or prior to the **Initial Closing** in connection with the performance by each of **Hydro**, the **Limited Partnership** and the **General Partner** of their respective obligations under this **PDA** shall have been completed to the satisfaction of NCN and TPC and their counsel acting reasonably and NCN and TPC shall have received copies of all such documentation or other evidence as they may reasonably request in order to establish the consummation of the transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to NCN and TPC and their counsel, acting reasonably; and
- (j) **Legal Opinions.** Counsel to **Hydro** and counsel to the **Limited Partnership** and the **General Partner** each shall have delivered to NCN and TPC on behalf of their respective clients a favourable opinion as to power, authority, capacity and due execution only, in form and substance satisfactory to counsel for NCN and TPC, acting reasonably.

Remedy to NCN and TPC for Non-Performance

13.4 If any of the conditions contained in section 13.3 (other than a condition to be performed by NCN or TPC that is within the control of either of them) shall not be performed or fulfilled at or prior to the **Initial Closing Date** to the satisfaction of NCN and TPC, acting jointly and reasonably, or waived by NCN or TPC in whole or in part, NCN and TPC may terminate their respective obligations pursuant to this **PDA**, without prejudice to any claims they may have for breach of covenant, representation or warranty, or for specific performance of the obligations of **Hydro** hereunder other than the obligations under Articles III, IV and V hereof (which provisions shall also terminate).

Conditions Precedent to Initial Closing in Favour of the Limited Partnership

13.5 The obligations of the **Limited Partnership** related to the **Limited Partnership Transaction** shall be subject to and contingent upon the fulfillment of the following conditions precedent to the satisfaction of the **Limited Partnership**, as certified or waived in writing by the **Limited Partnership** on the **Initial Closing Date**:

- (a) **Representations and Warranties.** All of the representations and warranties of each of **Hydro**, **NCN** and **TPC** contained in this **PDA** shall be true and correct in all material respects at the **Time of Initial Closing** with the same force and effect as if such representations and warranties were made at and as of such time, and certificates of the President of each of **Hydro** and **TPC** and **Chief and Council** dated the **Initial Closing Date** to that effect, shall have been delivered to the **Limited Partnership**, such certificates to be in form and substance satisfactory to the **Limited Partnership** acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions to be complied with or performed by each of **Hydro**, **NCN** and **TPC** at or before the **Time of Initial Closing** shall have been complied with or performed in all material respects, and certificates of the President of each of **Hydro** and **TPC** and **Chief and Council** dated the **Initial Closing Date** to that effect, shall have been delivered to the **Limited Partnership**, such certificates to be in form and substance satisfactory to the **Limited Partnership** acting reasonably;
- (c) **Subscriptions.** Each of **Hydro** and **TPC** shall have duly executed and delivered a **Subscription Agreement** together with its **Subscription Price** with respect thereto and shall have duly executed and delivered the **Limited Partnership Agreement**, all in the manner described in this **PDA**;
- (d) **Hydro Service Agreements.** Each of the **Hydro Service Agreements** shall have been duly executed and delivered by all parties thereto, except for the **Interconnection and Operating Agreement**, which shall have been assigned to the **Limited Partnership**;
- (e) **NCN Loan Agreements.** Each of the **NCN Loan Agreements** shall have been duly executed and delivered by the respective parties thereto;
- (f) **Other Agreements.** Each of the **NCN Adverse Effects Agreement**, the **Revenue Advance Consolidation Agreement**, the **NCN Deed of Assignment**, the **Taskinigahp Trust Indenture** and the **Commitment Agreement** and each of the **Project Lands Agreements** shall have been duly executed and delivered by the respective parties thereto;
- (g) **No Orders or Injunctions.** There shall have been no order or preliminary or permanent injunction entered in any action or proceeding in any court of competent jurisdiction or governmental authority (which has jurisdiction over the enforcement of the applicable laws) making illegal or prohibiting the consummation of the **Limited Partnership Transaction**;

- (h) **Legal Matters.** All documentation relating to the due authorization and completion of the transactions contemplated hereunder and all actions and proceedings required to be taken on or prior to the **Initial Closing** in connection with the performance by each of **Hydro, NCN and TPC** of their respective obligations under this **PDA** shall have been completed to the satisfaction of the **Limited Partnership** and its counsel acting reasonably and the **Limited Partnership** shall have received copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to the **Limited Partnership** and its counsel, acting reasonably; and
- (i) **Legal Opinions.** Counsel to **Hydro** and counsel to **NCN and TPC** each shall have delivered to the **Limited Partnership** on behalf of their respective clients a favourable opinion as to power, authority, capacity and due execution only, in form and substance satisfactory to counsel for **the Limited Partnership**, acting reasonably.

Remedy to the Limited Partnership for Non-Performance

13.6 If any of the conditions contained in section 13.5 shall not be performed or fulfilled at or prior to the **Initial Closing Date** to the satisfaction of the **Limited Partnership** acting reasonably, or waived by the **Limited Partnership** in whole or in part, the **Limited Partnership** may terminate its obligations to **Hydro, NCN and TPC** in connection with the **Limited Partnership Transaction** without prejudice to any claims it may have for breach of covenant, representation or warranty.

Actions to Satisfy Initial Closing Conditions

13.7 Each of the **Parties** hereby agrees to take all such actions as are within its power to control, and to use its best efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with any conditions set forth in this Article XIII which are for the benefit of any other **Party** hereto.

ARTICLE XIV

CLOSING ARRANGEMENTS

Place and Time of Initial Closing

14.1 The **Initial Closing** shall take place at the **Time of Initial Closing** at the offices of Thompson Dorfman Sweatman LLP counsel for **Hydro**, at 2200-201 Portage Avenue, Winnipeg, Manitoba, or at such other place and time as the **Parties** may agree.

Issue of Limited Partnership Units

14.2 At the **Time of Initial Closing**, upon fulfillment of all of the conditions set out in Article XIII that have not been waived in writing by the applicable **Party**, the **Limited Partnership** shall deliver to **TPC** and to **Hydro** certificates representing their respective units in the **Limited Partnership** so subscribed for, restricted as to transfer.

TPC's Obligations on Final Closing

14.3 On the **Final Closing Date**, **TPC** shall provide to the **Limited Partnership** a statutory declaration signed by the President of **TPC** certifying that the **Equity Credit Final Closing Conditions** have, or have not, been satisfied and, if **TPC** has repaid a portion of the **Equity Credit Facility** to **Hydro** using **Approved Funds** in order to satisfy the **Equity Credit Final Closing Conditions**, specifying the amount so repaid.

If TPC No Longer a Limited Partner as of Final Closing

14.4 If on the **Final Closing Date**, following the completion of the purchase and sale of **TPC's** units in the **Limited Partnership** pursuant to the exercise, if any, by **TPC** of the **Final Closing Sale Right** or by **Hydro** of the **Final Closing Purchase Right**, **TPC** no longer owns any units in the **Limited Partnership**, then:

- (a) **NCN** and **TPC** each shall provide to each of the **Limited Partnership** and to **Hydro** a duly executed release whereby each of **NCN** and **TPC** releases and discharges each of the **Limited Partnership** and **Hydro** of and from any and all actions, causes of actions, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which **NCN**, **NCN** on behalf of any **Member**, and **TPC**, and their respective successors, assigns, heirs, executors, or administrators, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever to the extent attributed to or arising out of the **Limited Partnership Transaction**;
- (b) except as **Hydro** otherwise agrees, **NCN** and **TPC** each shall return to **Hydro** all **Confidential Information** in the possession of **NCN** and **TPC**, respectively, and use their respective best efforts to return to **Hydro** all **Confidential Information** in the possession of their respective **Advisors** including, without limitation, all **Confidential Information** in the possession of persons who signed **Confidentiality Agreements**, without retaining any copies, reproductions, notes or excerpts thereof;
- (c) the **General Partner**, the **Limited Partnership** and **Hydro** each shall provide to each of **NCN**, **NCN's** nominee directors on the board of the **General Partner** and **TPC**, a duly executed release whereby each of the **Limited Partnership** and **Hydro** releases and discharges each of **NCN**, **NCN's** nominee directors on the board of the **General Partner** and **TPC** of and from any and all actions, causes of actions, suits, claims, demands, losses or damages of any nature or kind

whatsoever, at law or in equity, which each of the **Limited Partnership** and **Hydro** and their respective successors and assigns have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever to the extent attributed to or arising out of the **Limited Partnership Transaction**; and

- (d) upon request by **NCN** and **TPC**, **Hydro**, the **Limited Partnership** and the **General Partner** will return to **NCN** and **TPC** any and all information of a confidential nature, whether written, in the form of computer data or in any other form whatsoever, relating to **NCN** or to **TPC** in the possession of any of **Hydro**, the **Limited Partnership** or the **General Partner**, but shall not be required to return any information that may have been of a confidential nature but has been released by **NCN** or **TPC**, or by **Hydro** or the **Limited Partnership** or the **General Partner** with the consent of **NCN** or **TPC**, into the public domain, or otherwise has become available to the public through no fault or breach of this **PDA** on the part of **Hydro** or the **Limited Partnership** or the **General Partner** or their respective employees, representatives, agents or **Advisors**.

TPC's Obligations on Adjustment Date

14.5 On the **Adjustment Date**, **TPC** shall provide to the **Limited Partnership** a statutory declaration signed by the President of **TPC** certifying that the **Equity Credit Facility Adjustment Conditions** have, or have not, been satisfied and, if **TPC** has repaid a portion of the **Equity Credit Facility** to **Hydro** using **Approved Funds** in order to satisfy the **Equity Credit Facility Adjustment Conditions**, specifying the amount so repaid.

If TPC No Longer a Limited Partner as of Adjustment Date

14.6 If as of and from the **Adjustment Date** **TPC** is to no longer be a **Limited Partner**, then on the **Adjustment Date** **NCN** and **TPC** each shall comply with the provisions of sections 14.4 (a) and (b) and **Hydro**, the **Limited Partnership** and the **General Partner** each shall comply with the provisions of sections 14.4 (c) and (d).

Transfers of TPC's Units

14.7 If at any time **TPC** no longer owns any units in the **Limited Partnership** pursuant to the exercise of any of the **Non-Completion Sale Right**, the **Twenty-Fifth Anniversary Sale Right**, the **Maturity Date Sale Right** or the **Non-Completion Purchase Right** (excluding the **Term Sale Right**), then at that time **NCN** and **TPC** each shall comply with the provisions of sections 14.4 (a) and (b) and the **Limited Partnership** and **Hydro** each shall comply with the provisions of sections 14.4 (c) and (d), unless the transfer of **TPC's** units has been referred to arbitration pursuant to Article XXI of this **PDA** (or to a court having jurisdiction in accordance with the terms of this **PDA**), in which case no releases will be provided by any party until such time as the **Arbitrator** has determined the matter.

ARTICLE XV

CONSTRUCTION CONDITIONS

Conditions Precedent to Construction Proceeding

15.1 The right of the **Limited Partnership** to proceed with the construction of the **Wuskwatim Project** shall be subject to and contingent upon the fulfillment of the following conditions precedent:

- (a) **Limited Partnership Transaction.** All of the **Initial Closing Conditions** set forth in Article XIII of this **PDA** related to the **Limited Partnership Transaction** shall have been satisfied on the **Initial Closing Date** and the **Limited Partnership Transaction** shall have closed, unless the failure to close is as a result of the non-performance or non-fulfillment of a condition to be performed or fulfilled by **NCN** or **TPC**;
- (b) **Closing Licenses.** All of the **Closing Licenses** shall have been issued in the name of or assigned to the **Limited Partnership** and there shall be no terms or conditions attaching to any of the **Closing Licenses** in respect of which **NCN** and **TPC** have delivered a **Deficiency Notice** to the **Limited Partnership** which has not been resolved in the manner provided in this **PDA**; and
- (c) **No Orders or Injunctions.** There shall have been no order or preliminary or permanent injunction entered in any action or proceeding in any court of competent jurisdiction or governmental authority (which has jurisdiction over the enforcement of the applicable laws) making illegal or prohibiting the development of the **Wuskwatim Project**.

ARTICLE XVI

TPC AND TASKINIGAHP TRUST

Consent to Use TPC

16.1 **Hydro** agrees to the use by **NCN** of **TPC** as **NCN's** nominee for the purposes of investing in the **Limited Partnership** on the condition that **NCN** is now and shall continue to be the beneficial owner of all of the issued and outstanding shares of **TPC**, except as provided in sections 16.3 or 16.4.

Restriction on Business

16.2 **NCN** agrees that it will not use **TPC** for any business activity other than to invest in the **Limited Partnership** and carry out its obligations under this **PDA** and under any agreement contemplated by this **PDA** without the prior written approval of **Hydro**.

Restriction on Transfer

16.3 NCN agrees with **Hydro** that for so long as **TPC** owns units in the **Limited Partnership**, or for so long as either **TPC** or **NCN** has any indebtedness to **Hydro** pursuant to the **NCN Loan Agreements** or the **Revenue Advance Consolidation Agreement**, **NCN** will not sell, transfer, assign, encumber or pledge as collateral (except for an encumbrance or pledge to **Hydro**) or dispose of in any way, directly or indirectly, its beneficial interest in its shares in the capital stock of **TPC** and will not suffer or permit or cause the shares in the capital stock of **TPC** in respect of which it holds the beneficial interest to be registered in the name of any person other than **NCN**, or the **Chief** or a **Councillor** in trust as bare trustee for **NCN**, without the prior written consent of **Hydro**, except as provided in section 16.4.

Prohibition Against Issue of Additional Securities

16.4 **TPC** agrees with **Hydro** that it will place notice of the restriction on transfer of its securities on all share certificates issued or to be issued by it and that it will not authorize, nor will it record or permit or suffer to be recorded any transfer of its securities on its books and ledgers except in accordance with this Article. **TPC** further agrees with **Hydro** that for so long as it owns units in the **Limited Partnership**, except for the shares in its capital stock issued to the **Chief** or a **Councillor** in trust as bare trustee for **NCN**, as at the **Date of this PDA**, it will not issue any additional shares or other securities to any firm, person, firm, corporation, band (within the meaning of the *Indian Act* (Canada)) or other entity, other than **NCN**, or the **Chief** or a **Councillor** in trust as bare trustee for **NCN**, without the written consent of **Hydro**.

Hydro Consent to Deed of Assignment

16.5 **Hydro** consents to the terms of the **NCN Deed of Assignment**, subject to **NCN**, **TPC** and **Taskinigahp Trust** executing the **Commitment Agreement** in favour of **Hydro** on the **Initial Closing Date**.

Limited Partnership Consent to Deed of Assignment

16.6 The **Limited Partnership** consents to the terms of the **NCN Deed of Assignment**, subject to **NCN**, **TPC** and **Taskinigahp Trust** executing the **Commitment Agreement** in favour of **Hydro** on the **Initial Closing Date**.

Execution of Agreements

16.7 The **Parties** agree that the **Taskinigahp Trust Indenture**, the **NCN Deed of Assignment** and the **Commitment Agreement** will be executed by the respective parties thereto on or before the **Initial Closing Date**, irrespective of whether or not the **Initial Closing** occurs.

Collateral Commitments

16.8 **NCN** agrees:

- (a) that for so long as **TPC** owns units in the **Limited Partnership** it will, as the sole beneficial holder of all of the shares of **TPC**, take all such steps as are required to maintain the corporate existence of **TPC** and to ensure that at all times there is a duly elected board of directors of **TPC**; and
- (b) that immediately upon **NCN** appointing a new corporate trustee for the **Taskingahp Trust**, it will provide notice of such appointment to **Hydro**.

ARTICLE XVII

POWER PURCHASE AGREEMENT REVIEW PROCESS

General

17.1 **Energy Rate Reviews, Transaction Rate Reviews** and reviews in respect of environmental credits referred to in the **Power Purchase Agreement** shall be conducted pursuant to the provisions of this Article XVII. For the purposes of this Article, where the initial letter of a word is capitalized and the word is printed in bold, that word shall have the meaning accorded to it in this **PDA** or in the **Power Purchase Agreement**, as the context in which the word is used requires.

Energy Rate Review for Insufficient Transactions

17.2 **Hydro** shall provide a copy of the annual report on **Long-Term Transactions** and **Opportunity Transactions** referred to in section 5.1 of the **Power Purchase Agreement** to **NCN** at the same time it provides a copy to the **Limited Partnership**. Where a report in respect of a particular **Hydro Financial Year** discloses that there were **Insufficient Transactions** in respect of **Long-Term Transactions** or **Opportunity Transactions** during that **Hydro Financial Year**, then within 90 days of having received the report in respect of that **Hydro Financial Year**, in the case of **Long-Term Transactions**, either **Hydro** or **NCN** upon written notice given to the other party may appoint an **Expert**, chosen pursuant to the procedure set out in section 17.15, to review the pricing mechanism under the **Power Purchase Agreement** in respect of **Long-Term Transactions** and, in the case of **Opportunity Transactions**, within 90 days of having received the report in respect of that **Hydro Financial Year**, **Hydro** and **NCN** shall appoint an **Expert**, chosen pursuant to the procedure set out in section 17.15, to review the pricing mechanism under the **Power Purchase Agreement** in respect of **Opportunity Transactions**, and provide non-binding recommendations as to what changes, if any, are required to the pricing mechanism so that the pricing mechanism will be effective to establish a price for power delivered by the **Limited Partnership** to **Hydro** which is based on the **Pricing Principles** (the “**Representative Price**”).

Five -Year Energy Rate Review

17.3 Unless waived by NCN and **Hydro**, once in every five-year period during the **Term** of the **Power Purchase Agreement**, commencing with the five-year period ending on the year-end for the **Hydro Financial Year** occurring five years after the **Final Closing**, provided there has not been an **Energy Rate Review** within the immediately two preceding years, either **Hydro** or **NCN**, upon written notice given to the other party, may cause an **Expert** to be appointed pursuant to the procedure set out in section 17.15, to review the pricing mechanism under the **Power Purchase Agreement** and provide non-binding recommendations as to what changes, if any, are required to the pricing mechanism so that the pricing mechanism will be effective to establish the **Representative Price**.

Energy Rate Review on Renewal

17.4 Unless waived by NCN and **Hydro**, on any extension of the **Term** of the **Power Purchase Agreement**, provided there has not been an **Energy Rate Review** within the immediately preceding two years, either **Hydro** or **NCN**, upon written notice given to the other party, may cause an **Expert** to be appointed pursuant to the procedure set out in section 17.15, to review the pricing mechanism under the **Power Purchase Agreement** and provide non-binding recommendations as to what changes, if any, are required to the pricing mechanism so that the pricing mechanism will be effective to establish the **Representative Price**.

Transaction Rate Review

17.5 NCN, no later than 90 days after receipt of a report referred to in section 5.1 of the **Power Purchase Agreement** in respect of a particular **Hydro Financial Year**, may advise **Hydro** in writing that it disputes the **Adjustments** for that year, and the basis for its dispute. If NCN and **Hydro** cannot resolve such dispute, NCN, upon written notice given to **Hydro**, may cause an **Expert** to be appointed pursuant to the procedure set out in section 17.15, to review such **Adjustments** and provide its non-binding recommendations as to what changes, if any, should be made to the **Adjustments** to which NCN has objected.

Review in Respect of Environmental Credits

17.6 Environmental credits may become available in the future in respect of the **Wuskwatim Generating Station**, although it is not known currently how such credits might be determined, calculated or applied. It is agreed in principle that any environmental credits that are attributable to the **Wuskwatim Generating Station** will be assets of or credited to the **Limited Partnership**, provided that the value of such credits is not already reflected to the benefit of the **Limited Partnership** in the pricing mechanism under the **Power Purchase Agreement**. Upon energy credits becoming available, unless NCN and **Hydro** otherwise agree, either **Hydro** or **NCN**, upon written notice given to the other party, may appoint an **Expert**, chosen pursuant to the procedure set out in section 17.15, to review the calculation or application of such credits and provide non-binding recommendations as to whether the value of such credits is already reflected to the benefit of the **Limited Partnership** in the pricing mechanism under the **Power Purchase Agreement** and if not, how such credits ought to be credited to the **Limited Partnership**.

Review by Second Expert

17.7 If either **NCN** or **Hydro** is not prepared to accept the recommendations of the first **Expert** made pursuant to section 17.2, 17.3 or 17.4, such party may give written notice to the other party and to such **Expert** that it wants to negotiate an agreement on the changes to be made to the pricing mechanism under the **Power Purchase Agreement** with the assistance of the **Expert** acting as a mediator. If, within 45 days of the delivery of such notice, the parties have not reached any agreement, either one of them, upon written notice given to the other of them, may cause a second **Expert** to be appointed pursuant to the procedure set out in section 17.15, who will make a decision on the issue referred to the first **Expert**, based on the **Pricing Principles**, after having reviewed the **Power Purchase Agreement**, the first **Expert's** report and recommendations and the written submissions, if any, of the parties.

Submissions to Second Expert

17.8 **NCN** and **Hydro** shall be entitled to make written submissions to the second **Expert** and to the other party within 45 days of the appointment of the second **Expert**. The second **Expert** may require either or both parties to provide further information deemed necessary to explain, amplify or clarify any written submission made, either at a meeting convened by the second **Expert** or through further written submissions. In either case, both parties will receive reasonable notice of the second **Expert's** request and be afforded the opportunity to respond to any information or clarification provided by the other party, either at a meeting of which notice has been given to all parties or by way of written reply to the other party's written submission, as may be determined by the second **Expert**.

Decision of Second Expert

17.9 The decision of the second **Expert** regarding the changes which are required to the pricing mechanism under the **Power Purchase Agreement** in order to ensure that the use of the pricing mechanism will be effective to establish the **Representative Price** shall be final and binding on the parties. The findings of the second **Expert**, including findings of fact, shall not be subject to any appeal or review provided that such **Expert's** decision adheres to the directive in section 17.13

Transaction Rate Review by Second Expert

17.10 If either **NCN** or **Hydro** is not prepared to accept the recommendations of the first **Expert** made pursuant to section 17.5, then the provisions of sections 17.7, 17.8 and 17.9 shall apply, except that such second **Expert** will make a decision as to what changes, if any, should be made to the **Adjustments**.

Review by Second Expert re Environmental Credits

17.11 If either **NCN** or **Hydro** is not prepared to accept the recommendations of the first **Expert** made pursuant to section 17.6, then the provisions of sections 17.7, 17.8 and 17.9 shall

apply, except that such second **Expert** will make a decision, based on the **Pricing Principles**, as to whether the value of such credits is already reflected to the benefit of the **Limited Partnership** in the pricing mechanism under the **Power Purchase Agreement** and if not, how the value of such credits ought to be credited to the **Limited Partnership**.

Instructions to Expert

17.12 The party requesting a review by or causing the appointment of an **Expert** under this Article XVII shall provide the **Expert** with a copy of this **PDA** and a copy of the **Power Purchase Agreement**. The **Expert** shall provide its recommendations or make its decision, as the case may be, within 90 days of its appointment or within such longer period as **NCN** and **Hydro** may agree upon at the request of the **Expert**.

Limitations on Expert's Authority

17.13 The **Expert** appointed under this Article XVII does not have the authority to amend or vary the **Pricing Principles** and must adhere to the **Pricing Principles** in making its recommendations or decision, as the case may be. For greater certainty, the **Expert** does not have the authority to amend or vary the terms of other fees or charges set out in the **Power Purchase Agreement** including, without limitation, the calculation of line losses or fees for compensation for risk.

Onus of Proof in Certain Circumstances

17.14 In any review of the pricing mechanism under the **Power Purchase Agreement** occurring when there are not **Insufficient Transactions**, the party who triggered the review will have the onus of demonstrating to the **Expert** that the **Long-Term Firm Transaction Rate** or the **Opportunity Transaction Rate**, as the case may be, does not establish the **Representative Price**.

Appointment of Experts

17.15 **NCN** and **Hydro** shall endeavour to agree on the appointment of an **Expert**. If **NCN** and **Hydro** are unable to agree on the appointment of an **Expert**, either of them may make application to either the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) to appoint a person to act as **Expert** from a list of persons submitted by **NCN** and **Hydro**, or if only one of them submits a list, from the list submitted by that party.

Binding on Limited Partnership

17.16 Any agreement made between **Hydro** and **NCN** or decision made by a second **Expert** in accordance with the provisions of this Article XVII shall be binding on the **Limited Partnership**.

Costs

17.17 **NCN** and **Hydro** shall each pay its own costs incurred in connection with a review conducted by an **Expert** under this Article XVII and the **Limited Partnership** shall pay the fees and expenses of the **Expert**, subject to a different award as to costs by the **Expert** made following the completion of such review.

ARTICLE XVIII

OPERATIONS AND MAINTENANCE AGREEMENT REVIEW PROCESS

Review Process

18.1 Reviews with respect to **Operations and Maintenance Costs** and **Operations and Maintenance Services** under the **Operations and Maintenance Agreement** shall be conducted pursuant to the provisions of this Article XVIII. For the purposes of this Article, where the initial letter of a word is capitalized and the word is printed in bold, that word shall have the meaning accorded to it in this **PDA** or in the **Operations and Maintenance Agreement**, as the context in which the word is used requires.

Review by Expert of Operations and Maintenance Costs

18.2 **Hydro** shall provide a copy of the annual report on **Operations and Maintenance Costs** referred to in section 4.3 (4) of the **Operations and Maintenance Agreement** to **NCN** at the same time it provides such report to the **Limited Partnership**. **NCN**, no later than 90 days after receipt of a report in respect of a particular **Fiscal Year** of the **Limited Partnership**, provided there has not been a review by an **Expert** of the **Operations and Maintenance Costs** within the immediately preceding **Fiscal Year**, may advise **Hydro** in writing that it disputes that all or any portion of the **Operations and Maintenance Costs** have been charged to the **Limited Partnership** in a manner consistent with the **Costs Calculation Criteria** for that **Fiscal Year**, and the basis for its dispute. If **NCN** and **Hydro** cannot resolve such dispute, **NCN**, upon written notice given to **Hydro**, may cause an **Expert** to be appointed pursuant to the procedure set out in section 18.10, to review such charges and provide its non-binding recommendations, based on the **Costs Calculation Criteria**, as to what changes, if any, should be made to the charges to which **NCN** has objected.

Five-Year Internal Review of Operations and Maintenance Services

18.3 **Hydro** shall conduct an internal review of the manner in which it provides the **Operations and Maintenance Services** to the **Limited Partnership** pursuant to the **Operations and Maintenance Agreement** at least once in every five-year period during the **Term**, commencing with the five-year period ending on the year-end for the **Limited Partnership** occurring five years after the **Final Closing**. **Hydro** shall share the results of such review with **NCN**.

Ten-Year Review by Expert of Operations and Maintenance Services

18.4 NCN, no later than 90 days following the year-end of the **Limited Partnership** occurring ten years after the **Final Closing** and each subsequent ten year period during the **Term** of the **Operations and Maintenance Agreement**, upon written notice given to **Hydro**, may cause an **Expert** to be appointed pursuant to the procedure set out in section 18.10, to review whether the manner in which **Hydro** provides the **Operations and Maintenance Services** to the **Limited Partnership** is consistent with the **Service Parameters** and to provide its non-binding recommendations as to what changes, if any, should be made to the manner in which **Hydro** provides the **Operations and Maintenance Services** to the **Limited Partnership** so as to be consistent with the **Service Parameters**.

Review by Second Expert

18.5 If **NCN** or **Hydro** is not prepared to accept the recommendations of the first **Expert** made pursuant to section 18.2 or 18.4, such party may give notice to the other party and to such **Expert** that it wants to negotiate an agreement with respect to the matters in dispute, with the assistance of the **Expert** acting as a mediator. If, within 45 days of the delivery of such notice, the parties have not reached any agreement, either one of them upon written notice given to the other party may cause a second **Expert** to be appointed pursuant to the procedure set out in section 18.10, who will make a decision, after having reviewed the **Operations and Maintenance Agreement**, the first **Expert's** report and recommendations and the written submissions, if any, of the parties, as to whether all or any portion of the **Operations and Maintenance Costs** have been charged to the **Limited Partnership** in a manner which is not consistent with the **Costs Calculation Criteria**, or as to whether **Hydro** has provided the **Operations and Maintenance Services** to the **Limited Partnership** in a manner which is not consistent with the **Service Parameters**, as the case may be, and if such second **Expert's** decision is that **Hydro** has so charged all or any portion of the **Operations and Maintenance Costs** or has so provided all or any portion of the **Operations and Maintenance Services**, it shall make a decision as to the direct losses suffered by the **Limited Partnership** as a result and the changes to be made by **Hydro** in charging the **Operations and Maintenance Costs** or in the provision of **Operations and Maintenance Services**, as the case may be.

Submissions to Second Expert

18.6 **NCN** and **Hydro** shall be entitled to make written submissions to the second **Expert** and to the other party within 45 days of the appointment of the second **Expert**. The second **Expert** may require either or both parties to provide further information deemed necessary to explain, amplify or clarify any written submission made, either at a meeting convened by the second **Expert** or through further written submissions. In either case, both parties will receive reasonable notice of the second **Expert's** request and be afforded the opportunity to respond to any information or clarification provided by the other party, either at a meeting of which notice has been given to all parties or by way of written reply to the other party's written submission, as may be determined by the second **Expert**.

Decision of Second Expert

18.7 Subject to section 18.9, the decision of the second **Expert** with respect to the direct losses suffered by the **Limited Partnership** and regarding the changes, if any, which are required to be made by **Hydro** with respect to charging **Operations and Maintenance Costs**, based on the **Costs Calculation Criteria**, or changes to the manner in which **Hydro** provides the **Operations and Maintenance Services**, based on the **Service Parameters**, as the case may be, in order to discharge its obligations under the **Operations and Maintenance Agreement**, shall be final and binding on the parties. The findings of the second **Expert**, including findings of fact, shall not be subject to any appeal or review provided that such **Expert's** decision adheres to the directives in section 18.9.

Instructions to Expert

18.8 The party requesting a review by or causing the appointment of an **Expert** under this Article XVIII shall provide the **Expert** with a copy of this **PDA** and a copy of the **Operations and Maintenance Agreement** and, where the issue to be determined relates to the provision of **Operations and Maintenance Services**, a copy of the **System Operations and Dispatch Agreement**. The **Expert** shall provide its recommendations or make its decision, as the case may be, within 90 days of accepting the request to conduct a review or its appointment to make a decision, or within such longer period as **NCN** and **Hydro** may agree upon at the request of the **Expert**.

Limitation on Expert's Authority

18.9 An **Expert** appointed under this Article XVIII does not have the authority to amend or vary the **Cost Calculation Criteria** or the **Service Parameters** and must adhere to the **Costs Calculation Criteria** or the **Service Parameters**, as the case may be, in making its recommendations or decision, as the case may be. In addition, such **Expert** shall not have authority to require a payment by **Hydro** in excess of the amount it has received from the **Limited Partnership** under the **Operations and Maintenance Agreement** or to direct or constrain in any way **Hydro's** sole ability and authority to dispatch the **Integrated Power System** or the **Wuskwatim Project** as part of the **Integrated Power System** in such manner as **Hydro**, as operator, in its sole discretion deems appropriate, as provided in the **System Operations and Dispatch Agreement** including, without limitation, in any manner which, in **Hydro's** sole discretion, may adversely impact on safety considerations in respect of the operation of the **Integrated Power System**.

Appointment of Expert

18.10 **NCN** and **Hydro** shall endeavour to agree on the appointment of an **Expert**. If **NCN** and **Hydro** are unable to agree on the appointment of an **Expert**, either of them may make application to either the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) to appoint a person to act as **Expert** from a list of persons submitted by **NCN** and **Hydro**, or if only one of them submits a list, from the list submitted by that party.

Compliance by Hydro

18.11 Subject to section 18.9, **Hydro** will pay the amounts directed to be paid, and shall change its procedures and conduct in charging **Operations and Maintenance Costs** and carrying out the **Operations and Maintenance Services** directed to be changed by the second **Expert** in its decision.

Binding on Limited Partnership

18.12 Any agreement made between **Hydro** and **NCN** and any decision made by a second **Expert** in accordance with the provisions of this Article XVIII shall be binding on the **Limited Partnership**.

Costs

18.13 **NCN** and **Hydro** shall each pay its own costs incurred in connection with a review conducted by an **Expert** under this Article XVIII and the **Limited Partnership** shall pay the fees and expenses of the **Expert**, subject to a different award as to costs by the **Expert** made following the completion of such review.

ARTICLE XIX

SYSTEM OPERATIONS AND DISPATCH AGREEMENT REVIEW PROCESS

General

19.1 Reviews of **Operating Costs** or reviews of the manner in which **Hydro** has controlled, operated and dispatched the **Integrated Power System**, including the **Wuskwatim Generating Station** as part of that system, under the **System Operations and Dispatch Agreement**, shall be conducted pursuant to the provisions of this Article XIX. For the purposes of this Article, where the initial letter of a word is capitalized and the word is printed in bold, that word shall have the meaning accorded to it in this **PDA** or in the **System Operations and Dispatch Agreement**, as the context in which the word is used requires.

Review by Expert of Operating Costs

19.2 **Hydro** shall provide a copy of the annual report on **Operating Costs** referred to in section 2.4(4) of the **System Operations and Dispatch Agreement**, to **NCN** at the same time it provides such report to the **Limited Partnership**. **NCN**, no later than 90 days after receipt of a report in respect of a particular **Fiscal Year** of the **Limited Partnership**, provided there has not been a review by an **Expert** of the **Operating Costs** within the immediately preceding **Fiscal Year**, may advise **Hydro** in writing that it disputes that all or any portion of the **Operating Costs** have been charged to the **Limited Partnership** in a manner consistent with the **Costs Calculation Criteria** for that **Fiscal Year**, and the basis for its dispute. If **NCN** and **Hydro** cannot resolve such dispute, **NCN**, upon written notice given to **Hydro**, may cause an **Expert** to be appointed pursuant to the procedure set out in section 19.9, to review such charges and

provide its non-binding recommendations, based on the **Costs Calculation Criteria**, as to what changes, if any, should be made to the charges to which NCN has objected.

Review by Expert of Control, Operation and Dispatch

19.3 **Hydro** shall provide a copy of the annual report on the control, operation and dispatch of the **Integrated Power System** referred to in section 2.2(2) of the **System Operations and Dispatch Agreement**, to **NCN** at the same time it provides such report to the **Limited Partnership**. **NCN**, no later than 90 days after receipt of a report in respect of a particular **Fiscal Year** of the **Limited Partnership**, provided there has not been a review by an **Expert** of the manner in which **Hydro** has controlled, operated and dispatched the **Integrated Power System**, including the **Wuskwatim Generating Station** as part of that system, within the immediately preceding **Fiscal Year**, may advise **Hydro** in writing that it disputes that **Hydro** has controlled, operated and dispatched the **Integrated Power System**, including the **Wuskwatim Generating Station** as part of that system, in a manner consistent with the **Control and Operation Parameters** for that **Fiscal Year**, and the basis for its dispute. If **NCN** and **Hydro** cannot resolve such dispute, **NCN**, upon written notice given to **Hydro**, may cause an **Expert** to be appointed pursuant to the procedure set out in section 19.9, to review such control, operation and dispatch and provide its non-binding recommendations as to whether **Hydro** has controlled, operated and dispatched the **Integrated Power System**, including the **Wuskwatim Generating Station** as part of that system, for that **Fiscal Year** in a manner consistent with the **Control and Operation Parameters** and if such **Expert's** recommendation is that **Hydro** has not so controlled, operated and dispatched the **Integrated Power System**, it shall provide its non-binding recommendations as to the direct losses suffered by the **Limited Partnership** as a result and, subject to section 19.8, as to the changes to be made by **Hydro** in the control, operation and dispatch of the **Integrated Power System** in order to be in compliance with the **Control and Operation Parameters**.

Review by Second Expert

19.4 If **NCN** or **Hydro** is not prepared to accept the determination of the first **Expert** made pursuant to sections 19.2 or 19.3, such party may give notice to the other party and to such **Expert** that it wants to negotiate an agreement with respect to the matters in dispute, with the assistance of the **Expert** acting as a mediator. If, within 45 days of the delivery of such notice, the parties have not reached any agreement, either one of them, upon written notice given to the other of them, may cause a second **Expert** to be appointed pursuant to the procedure set out in section 19.9, who will make a decision, after having reviewed the **System Operations and Dispatch Agreement**, the first **Expert's** report and recommendations and the written submissions, if any, of the parties, as to whether all or any portion of the **Operating Costs** have been charged to the **Limited Partnership** in a manner which is not consistent with the **Costs Calculation Criteria** or as to whether **Hydro** has operated and dispatched the **Integrated Power System**, including the **Wuskwatim Generating Station** as part of that system, in a manner which is not consistent with the **Control and Operation Parameters**, as the case may be, and if such second **Expert's** decision is that **Hydro** has so charged all or any portion of the **Operating Costs** or has so operated the **Integrated Power System**, it shall make a decision as to the direct losses suffered by the **Limited Partnership** as a result and, subject to section 19.8, as

to the changes to be made by **Hydro** in the control, operation and dispatch of the **Integrated Power System** in order to be in compliance with the **Control and Operation Parameters**.

Submissions to Second Expert

19.5 **NCN** and **Hydro** shall be entitled to make written submissions to the second **Expert** and to the other party within 45 days of the appointment of the second **Expert**. The second **Expert** may require either or both parties to provide further information deemed necessary to explain, amplify or clarify any written submission made, either at a meeting convened by the second **Expert** or through further written submissions. In either case, both parties will receive reasonable notice of the second **Expert's** request and be afforded the opportunity to respond to any information or clarification provided by the other party, either at a meeting of which notice has been given to all parties or by way of written reply to the other party's written submission, as may be determined by the second **Expert**.

Decision of Second Expert

19.6 Subject to section 19.8, the decision of the second **Expert** pursuant to section 19.4 with respect to direct losses suffered by the **Limited Partnership** and as to changes to be made by **Hydro** in the control, operation and dispatch of the **Integrated Power System** in order to be in compliance with the **Control and Operation Parameters**, shall be final and binding on the parties. The findings of the second **Expert**, including findings of fact, shall not be subject to any appeal or review provided that such **Expert's** decision adheres to the directives in section 19.8.

Instructions to Expert

19.7 The party requesting a review by or causing the appointment of an **Expert** under this Article XIX shall provide the **Expert** with a copy of this **PDA** and a copy of the **System Operations and Dispatch Agreement**. The **Expert** shall provide its recommendations or make its decision, as the case may be, within 90 days of accepting the request to conduct a review or its appointment to make a decision, or within such longer period as **NCN** and **Hydro** may agree upon at the request of the **Expert**.

Limitation on Expert's Authority

19.8 The **Expert** appointed under this Article XIX does not have the authority to amend or vary the **Cost Calculation Criteria** or the **Control and Operation Parameters** and must adhere to the **Cost Calculation Criteria** or **Control and Operation Parameters**, as the case may be, in making its recommendations or decision, as the case may be. In addition, such **Expert** shall not have authority to require a payment by **Hydro** other than the amount it determines to be direct losses as aforesaid, nor shall such **Expert** have authority to direct or constrain in any way whatsoever **Hydro's** sole ability and authority to dispatch the **Integrated Power System**, or the **Wuskawatim Project** as part of that system, in such manner as **Hydro**, as operator, in its sole discretion deems appropriate, as provided in the **System Operations and Dispatch Agreement**.

Appointment of Expert

19.9 NCN and Hydro shall endeavour to agree on the appointment of an **Expert**. If NCN and Hydro are unable to agree on the appointment of an **Expert**, either of them may make application to either the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) to appoint a person to act as **Expert** from a list of persons submitted by NCN and Hydro, or if only one of them submits a list, from the list submitted by that party.

Payment by Hydro

19.10 Subject to section 19.8, Hydro shall forthwith pay to the **Limited Partnership** the amount of the direct losses so determined by the second **Expert** in its decision and shall change its procedures and conduct in the control, operation and dispatch of the **Integrated Power System** as directed to be changed by the second **Expert**.

Binding on Limited Partnership

19.11 Any agreement made between Hydro and NCN and any decision made by a second **Expert** in accordance with the provisions of this Article XIX shall be binding on the **Limited Partnership**.

Costs

19.12 NCN and Hydro shall each pay its own costs incurred in connection with a review conducted by an **Expert** under this Article XIX and the **Limited Partnership** shall pay the fees and expenses of the **Expert**, subject to a different award as to costs by the **Expert** made following the completion of such review.

ARTICLE XX

LIMITED PARTNERSHIP AGREEMENT REVIEW PROCESS

General

20.1 Reviews of the level of reserves being held by the **Limited Partnership** pursuant to section 6.06 of the **Limited Partnership Agreement** shall be conducted pursuant to the provisions of this Article XX. For the purposes of this Article, where the initial letter of a word is capitalized and the word is printed in bold, that word shall have the meaning accorded to it in this **PDA** or in the **Limited Partnership Agreement**, as the context in which the word is used requires.

Review of Reserves

20.2 A **Limited Partner**, no later than 90 days after receipt of a report referred to in section 6.06 of the **Limited Partnership Agreement** in respect of a **Fiscal Year** occurring after the **Final Closing Date**, may advise the **General Partner** in writing that it disputes the level of

reserves being held by the **Limited Partnership**, and the basis for its dispute (but during the review the **Expert** shall have regard to the substance of the dispute). If the **Limited Partner** and the **General Partner** cannot resolve such dispute, the **Limited Partner**, upon written notice given to the **General Partner**, may cause an **Expert** to be appointed pursuant to the procedure set out in section 20.8, to review the level of reserves and provide its non-binding recommendations as to what adjustment, if any, should be made to the level of the reserves. (It is intended that the **Expert** review the aggregate level of reserves at the time of such review and thus, the **Expert's** review shall not be limited to a review of the actual amount taken out of income of the **Limited Partnership** in the **Fiscal Year** ended immediately prior to the **Expert's** review and added to reserves).

Review by Second Expert

20.3 If either the **Limited Partner** or the **General Partner** is not prepared to accept the recommendations of the first **Expert** made pursuant to section 20.2, such party may give written notice to the other party and to such **Expert** that it wants to negotiate agreement on the appropriate level of reserves with the assistance of the **Expert** acting as a mediator. If, within 45 days of the delivery of such notice, the parties have not reached any agreement, either one of them, upon written notice given to the other of them, may cause a second **Expert** to be appointed pursuant to the procedure set out in section 20.8, who will make a decision on the appropriate level of reserves for the **Limited Partnership**, after having reviewed the **Limited Partnership Agreement**, the first **Expert's** report and recommendations and the written submissions, if any, of the parties.

Submissions to Second Expert

20.4 The **Limited Partner** and the **General Partner** shall be entitled to make written submissions to the second **Expert** and to the other party within 45 days of the appointment of the second **Expert**. The second **Expert** may require either or both parties to provide further information deemed necessary to explain, amplify or clarify any written submission made, either at a meeting convened by the second **Expert** or through further written submissions. In either case, both parties will receive reasonable notice of the second **Expert's** request and be afforded the opportunity to respond to any information or clarification provided by the other party, either at a meeting of which notice has been given to all parties or by way of written reply to the other party's written submission, as may be determined by the second **Expert**.

Decision of Second Expert

20.5 The decision of the second **Expert** regarding the appropriate level of reserves to be held by the **Limited Partnership** shall be final and binding on the **Limited Partnership** and on the **Parties**. The findings of the second **Expert**, including findings of fact, shall not be subject to any appeal or review, provided that such **Expert's** decision adheres to the directive in section 20.7. If the decision of the second **Expert** is that the level of reserves is too high, then the excess amount shall be deemed to be **Distributable Cash** and shall be distributed by the **General Partner** to the **Partners** within 30 days of the second **Expert's** decision. If the decision of the second **Expert** is that the level of reserves is too low, then the amount of the deficiency shall be

accumulated by the **General Partner** in accordance with a schedule determined by the second **Expert** or, in the absence of such a determination, as determined by the **General Partner**.

Instructions to Expert

20.6 The **Limited Partner** requesting a review by or causing the appointment of an **Expert** under this Article XX shall provide the **Expert** with a copy of this **PDA** and a copy of the **Limited Partnership Agreement**. The **Expert** shall provide its recommendations or make its decision, as the case may be, within 90 days of its appointment or within such longer period as the **Limited Partner** and the **General Partner** may agree upon at the request of the **Expert**.

Limitations on Expert's Authority

20.7 In making its recommendations or decisions, as the case may be, the **Expert** appointed under this Article XX does not have the authority to amend or vary the terms of the **Limited Partnership Agreement** and shall consider only what level of reserves it is reasonable for the **Limited Partnership** to carry in connection with its current operation and future needs and in order to prudently carry on its **Business** based on prudent business practices, having regard to the purposes for which the reserves were established. For greater certainty, in making its recommendations or decisions, as the case may be, the **Expert** shall not consider the financing arrangements between the **Limited Partnership** and **Hydro** pursuant to the **Project Financing Agreement** or the financing arrangements between **TPC** or **NCN** and **Hydro** pursuant to the **NCN Loan Agreements**.

Appointment of Expert

20.8 The **Limited Partner** requesting a review by or causing the appointment of an **Expert** under this Article XX and the **General Partner** shall endeavour to agree on the appointment of an **Expert**. If the **Limited Partner** and the **General Partner** are unable to agree on the appointment of an **Expert**, either of them may make application to either the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) to appoint a person to act as **Expert** from a list of persons submitted by the **Limited Partner** and the **General Partner**, or if only one of them submits a list, from the list submitted by that party.

Costs

20.9 The **Limited Partner** requesting a review by or causing the appointment of an **Expert** under this Article XX shall pay its own costs incurred in connection with a review conducted by an **Expert** under this Article XX and the **Limited Partnership** shall pay the fees and expenses of the **General Partner** and of **Expert**, subject to a different award as to costs by the **Expert** made following the completion of such review.

ARTICLE XXI

DISPUTE RESOLUTION

General

21.1 Subject to sections 2.18 and 21.2 of this PDA,

- (a) all disputes, differences or claims, or apprehended disputes, differences or claims which arise under this PDA, the **Limited Partnership Agreement**, the **NCN Financing Agreement** or the **TPC Financing Agreement** (or under any loan or security agreement delivered under or in connection with the **NCN Financing Agreement** or the **TPC Financing Agreement**), relating to the application, interpretation, meaning, alleged violation, performance or non-performance of this PDA, the **Limited Partnership Agreement**, the **NCN Financing Agreement** or the **TPC Financing Agreement** (or any loan or security agreement delivered under or in connection with the **NCN Financing Agreement** or the **TPC Financing Agreement**), including, without limiting the generality of the foregoing, any dispute alleging a breach of a fiduciary duty by the **General Partner**, or any dispute alleging that **Hydro** failed to exercise its discretion reasonably in circumstances where it was required to do so under the particular agreement that is the subject of the dispute, shall be settled by final and binding arbitration pursuant to the provisions of this Article XXI;

- (b) where **TPC** proposes to bring an arbitration under this Article XXI in respect of any dispute, difference or claim, or apprehended dispute, difference or claim, the substance of which is that **Hydro** is in default under a **Hydro Service Agreement**, other than the **Construction Agreement** or the **Interconnection and Operating Agreement**, and that the **General Partner** has failed in its obligation to enforce the rights of the **Limited Partnership** with respect to such default and therefore is in breach of its fiduciary obligations to the **Limited Partnership**, such arbitration shall be brought by **NCN**, in the place and stead of **TPC**, against **Hydro**, in the place and stead of the **General Partner**, and in this event each of **TPC** and the **General Partner**, as well as **NCN** and **Hydro**, agree to be bound by the decision of the **Arbitrator** on the basis that an award for or against **NCN** shall be deemed to be an award for or against **TPC** and an award for or against **Hydro** shall be deemed to be an award for or against the **General Partner**, but any such arbitration otherwise shall be in accordance with the provisions of this Article XXI, provided that nothing herein is intended to alter in any way **TPC's** right to bring an arbitration under this Article XXI in respect of any dispute, difference or claim, or apprehended dispute, difference or claim, the substance of which is that **Hydro** is in default under either the **Construction Agreement** or the **Interconnection and Operating Agreement** and that as a result thereof the **General Partner** has failed in its obligation to enforce the rights of the **Limited Partnership** with respect to such default and therefore is in breach of its fiduciary obligations to the **Limited Partnership**.

Limitation

21.2 The provisions of this Article XXI do not apply to any of the following:

- (a) any recommendation, draft report, mediation, determination or decision which an **Expert** appointed pursuant to Articles XVII, XVIII, XIX or XX of this **PDA** may be required to issue, make or decide, as these matters fall within the exclusive jurisdiction of the **Expert** under such Articles and they shall not be the subject of a dispute, difference or claim or apprehended dispute, difference or claim under this Article XXI. Disputes, differences or claims or apprehended disputes, differences or claims concerning the general application, interpretation, meaning, or alleged violation of the procedures or processes outlined in Articles XVII, XVIII, XIX and XX may be the subject of a dispute, difference or claim under this Article XXI, but only to the extent the resolution of any such dispute, difference or claim is necessary to enable the **Expert** to carry out the functions exclusively vested in the **Expert** under those provisions or to enforce a decision made by an **Expert**;
- (b) any of the **Hydro Service Agreements**, except to the limited extent permitted under section 21.1 (b) of this **PDA**; or
- (c) any dispute, difference or claim or apprehended dispute, difference or claim with respect to a **Fundamental Operating Feature**, including as to whether or not there has been a breach of a **Fundamental Operating Feature**, which shall be dealt with in the manner described in section 2.13 of this **PDA**.

Reasonable Efforts to Resolve

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

Arbitration

21.4 A party (an "**Applicant**") who wants to settle a dispute, difference or claim or apprehended dispute, difference or claim referred to in section 21.1 (a "**Dispute**") shall provide the party or parties against whom the **Dispute** is brought, a written notice (a "**Dispute Notice**") which shall contain the following:

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

- (d) the relief, remedy, redress or declaratory order sought.

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

Reply

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

Referral to Chief Executive Officers

21.6 Within 30 days of the **Applicant’s** receipt of the **Reply**, if the **Dispute** has not been settled, the **Applicant** and each **Respondent** shall provide the **Dispute Notice** and **Reply** to its chief executive officer, or person having like authority. The chief executive officers or persons appointed by them respectively to act on behalf of each of them, respectively, with authority to settle the **Dispute**, shall meet and in good faith attempt to settle the **Dispute**. If no settlement is achieved within 30 days of the referral of the **Dispute** to the chief executive officers, the **Dispute** shall be referred to binding arbitration pursuant to the provisions of *The Arbitration Act* (Manitoba) and the following sections of this Article XXI, provided that if there is any inconsistency between the provisions of the said Act and the said sections, the provisions of the said sections shall prevail.

Appointment of Arbitrator

21.7 Subject to section 21.8, an **Arbitrator** shall be appointed to adjudicate the dispute, using the following procedure:

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

Qualifications of Arbitrator

21.8 An **Arbitrator** appointed pursuant to section 21.7 shall:

- (a) be qualified to decide the particular matter in dispute;
- (b) not have a pecuniary interest in the particular matter in dispute; and
- (c) not have, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to section 21.4, acted, or been a member of any firm that has acted, as solicitor, counsel or agent for any of the **Parties**.

Length of Hearing

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

Place of Hearing

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

Powers of the Arbitrator

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

Counsel

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

Evidence

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

Arbitrator's Award

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

Award Final

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

Costs of the Arbitration

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

Performance of Obligations

21.17 Each party to an arbitration agrees to continue performing its obligations under this **PDA** and under any other agreement which is the subject matter of the arbitration while any **Dispute** is being resolved or arbitrated, subject to any interim order to the contrary issued by the **Arbitrator**.

Confidentiality

21.18 All hearings before the **Arbitrator** shall be closed to the public. All statements and evidence submitted for the arbitration, the decision of the **Arbitrator**, the fact of the arbitration itself and all other aspects regarding the arbitration shall be kept strictly confidential, except as otherwise required by applicable law, or agreed to by **Hydro** and **NCN**, or determined by the **Arbitrator** (provided that the **Arbitrator** shall not order the disclosure to the public of **Confidential Information** unless the same is otherwise required by law).

Arbitrator's Undertaking

21.19 Upon appointment, every **Arbitrator** shall swear or affirm an undertaking, in the form set forth in Schedule 21-1.

Vacancy

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

Days

21.21 The word “days” wherever used in this Article XXI shall mean calendar days.

ARTICLE XXII

TRANSITIONAL MATTERS

Transition Funding

22.1 The **Limited Partnership** agrees to reimburse **NCN** (“**Transition Funding**”) for reasonable costs incurred by **NCN** following the **Date of this PDA** in connection with:

- (a) the wind up of **NCN’s Future Development Office** over approximately three months from the **Date of this PDA**;
- (b) the defence of any legal challenges in respect of the **Closing Licenses**;
- (c) the prosecution or defence by **NCN** of any legal challenges in respect of the **Referendum** which **NCN** chooses to prosecute or defend;

subject, in all cases, to **Hydro** first approving a work plan and budget prior to any such costs being incurred.

Implementation Funding

22.2 Subject to section 22.4, the **Limited Partnership** agrees to reimburse **NCN** (“**Implementation Funding**”), up to a maximum amount of \$2,700,000, for reasonable eligible costs incurred by or on behalf of **NCN** following the **Date of this PDA** up to the **Adjustment Date** in connection **NCN’s** or **TPC’s** participation in the development of the **Wuskwatim Project** in the manner provided in this **PDA**, subject to **Hydro** first approving a work plan and budget relating to such eligible costs prior to such eligible costs being incurred. Eligible costs are to be agreed upon by **Hydro** and **NCN**, both acting reasonably, subject to the following guidelines:

- (a) eligible costs generally shall include:

- (i) costs related to **NCN's** or **TPC's** participation, in the manner provided in this **PDA**, on the board of directors of the **General Partner** and on the **Construction Advisory Committee**, the **Monitoring Advisory Committee** and the **Advisory Committee on Employment** and on other advisory committees to the **Limited Partnership** or committees of the board of directors of the **General Partner** established from time to time hereafter;
 - (ii) costs related to the administration and monitoring of **TPC's** investment in the **Limited Partnership** and to exercise its rights as a limited partner of the **Limited Partnership**, including to attend meetings of the **Limited Partners**;
 - (iii) costs related to the administration and monitoring of **NCN's** involvement in **Wuskwatim Project** related job referral and on-the-job training for **Members**;
 - (iv) costs related to the administration of, and **Members'** participation on, approved **NCN** internal committees related to the management of the impacts of the **Wuskwatim Project** on **NCN** or **Members**;
 - (v) costs related to **NCN's** and **Members'** participation in ceremonies related to or associated with the **Wuskwatim Project**, but not including ceremonies conducted by or on behalf of the **Limited Partnership** in which **NCN** or **Members** otherwise would participate;
 - (vi) costs related to community involvement or community consultation processes associated with the **Wuskwatim Project**;
 - (vii) costs related to the management of issues and communications associated with **NCN's** or **TPC's** involvement in the **Wuskwatim Project**;
 - (viii) reasonable costs, at rates not greater than **Hydro's** standard rates, for legal, engineering, financial, business and accounting advisory services reasonably required with respect to any of the foregoing; and
 - (xi) reasonable costs for expenses, including travel, meals and other expenses at rates not greater than **Hydro's** standard rates, reasonably incurred with respect to any of the foregoing;
- (b) eligible costs generally shall not include:
- (i) costs related to work, services or functions that have been identified as being performed by other parties, including the **Limited Partnership**, **Hydro** or contractors or sub-contractors;

- (ii) costs related to work, services or functions that have been identified as being performed by **NCN** or **Members** or a **Qualifying NCN Business** under any **Direct Negotiation Contract**;
- (iii) costs related to work, services or functions that have been identified as being performed by **Members** employed by the **Limited Partnership** or by **Hydro**; or
- (iv) costs related to work, services or functions agreed to be funded under any other agreement.

For clarity, any costs of **NCN** or **TPC** of the nature or kind described in section 22.2 (a) incurred after the **Adjustment Date** will not be reimbursed by **Hydro** or by the **Limited Partnership**, unless otherwise agreed to in writing by **Hydro** or the **Limited Partnership** in their sole discretion.

Costs on Termination

22.3 If this **PDA** is terminated in accordance with the provisions of section 2.8, the **Limited Partnership** agrees to pay to **NCN**:

- (a) such portion of the **Transition Funding**, if any, remaining to be paid; or
- (b) such portion of the **Implementation Funding**, if any, as may be appropriate in the circumstances in order to wind down **NCN**'s implementation activities, as may be agreed to by the **Limited Partnership** and **NCN**, both acting reasonably;

subject to **Hydro** first approving a work plan and budget prior to any costs covered by such funding being incurred.

Construction Delay

22.4 If construction of the **Wuskwatim Project** is delayed for any reason for a period greater than three months without this **PDA** having been terminated in accordance with the provisions of section 2.8, then **Hydro** and **NCN** agree to negotiate in good faith revised arrangements with respect to **Implementation Funding** on the basis that, in the circumstances, it would not be practical for **NCN** to lay off all of its staff and completely terminate all of its implementation activities referred to in section 22.2 (a) during this holding period, nor would it be reasonable for **NCN** to carry on all its implementation activities during this holding period without diminution and if construction of the **Wuskwatim Project** later commences or recommences as provided in this **PDA**, then the aggregate amount of the **Implementation Funding** may require an increase, having regard to the duration of this holding period.

ARTICLE XXIII

RELEASE AND INDEMNITY

Release

23.1 NCN acknowledges and agrees that **Hydro** has satisfied all of its obligations to NCN and to **Members** pursuant to Article 8 of the **1996 NFA Implementation Agreement** in respect of the **Wuskwatim Project** and NCN hereby releases and forever discharges **Hydro** of and from any and all actions, causes of actions, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which NCN or NCN on behalf of any **Member**, or their respective successors, assigns, heirs, executors, or administrators, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever to the extent attributed to or arising out of **Hydro's** obligations pursuant to Article 8 of the **1996 NFA Implementation Agreement** in respect of the **Wuskwatim Project**, save and except as set forth in this **PDA**.

Indemnity

23.2 NCN hereby undertakes and agrees to indemnify and save harmless **Hydro** in respect of any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted, directly or indirectly, by any **Member** by reason of any cause, matter or thing whatsoever attributable to **Hydro's** obligations under Article 8 of the **1996 NFA Implementation Agreement** in respect of the **Wuskwatim Project**. This indemnity does not cover the costs of **Hydro** in resisting such claim and is conditional upon **Hydro**:

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

Limitation on Release

23.3 If this **PDA** is terminated in accordance with the provisions of section 2.8, then the release given by NCN pursuant to section 23.1 also shall terminate and **Hydro's** obligations under Article 8 of the **1996 NFA Implementation Agreement** with respect to any proposed hydro-electric development at or near Taskinigup Falls shall continue.

Future Acts

23.4 Nothing in this Article XXIII shall relieve either of **Hydro** or NCN of liability for breaches of this **PDA**, existing claims under or future breaches of the **1996 NFA Implementation Agreement**, future negligent or unlawful acts or omissions, or future wilful misconduct, on their own part, or on the part of those for whom they are responsible at law.

ARTICLE XXIV

ADDITIONAL COVENANTS

Acknowledgement of Limitations on Authority of NCN and TPC

24.1 NCN and TPC each covenants in favour of **Hydro**, the **General Partner** and the **Limited Partnership** that it shall not:

- (a) take an active part in the business of the **Limited Partnership** or exercise any power in connection therewith;
- (b) execute any document which binds or purports to bind the **Limited Partnership**, the **General Partner** or any other **Limited Partner** as such;
- (c) hold itself out as having the power or authority to bind the **Limited Partnership**, the **General Partner** or any other **Limited Partner** as such;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other **Limited Partner**, the **General Partner** or **Limited Partnership**;
- (e) bring any action for partition and sale or otherwise in connection with any interest in the property of the **Limited Partnership**, whether real or personal, or register or permit to be filed or registered or remain undischarged any lien or charge in respect of the property of the **Limited Partnership**;
- (f) bring any action against **Hydro** or the **General Partner** or the **Limited Partnership** other than pursuant to Articles XVII, XVIII, XIX, XX or XXI hereof, or bring any action against any officer or director of the **General Partner** or of **Hydro**; or
- (g) permit the transfer to NCN of the units in the **Limited Partnership** owned by TPC.

Full Disclosure by Hydro

24.2 **Hydro** has provided to NCN, TPC and their respective **Advisors**, on a confidential basis pursuant to signed **Confidentiality Agreements**, all information and documentation related to the **Wuskwatim Project** and the **Wuskwatim Transmission Project** and to **Hydro** in respect of the **Wuskwatim Project** and the **Wuskwatim Transmission Project** requested by NCN, TPC and their respective **Advisors**. **Hydro** also has provided to NCN and TPC and their respective **Advisors**, on a confidential basis pursuant to signed **Confidentiality Agreements**, additional information and documentation related to the **Wuskwatim Project** and the **Wuskwatim Transmission Project** and to **Hydro** in respect of the **Wuskwatim Project** and the **Wuskwatim Transmission Project** that had not been requested by NCN, TPC and their respective **Advisors**.

NCN and TPC each acknowledges having been provided with all such information and documentation and represents to **Hydro** and to the **Limited Partnership** that such information and documentation, together with its own information, documentation and analysis, has been sufficient for NCN, TPC and their respective **Advisors** to make informed decisions about the **Wuskwatim Project** and the **Wuskwatim Transmission Project**, including, without limitation, an informed investment decision about TPC's investment in the **Wuskwatim Project**.

No Representations or Warranties as to Financial Returns

24.3 Financial projections and projected financial return information in respect of the **Limited Partnership** has been prepared for information and due diligence purposes. Neither **Hydro** nor the **Limited Partnership** has made any representations or warranties, and neither **Hydro** nor the **Limited Partnership** makes any representations or warranties, with respect to any financial projections or any financial return information for the **Limited Partnership** or with respect to any returns that potentially may be earned by the **Limited Partnership**. Neither **Hydro** nor the **Limited Partnership** has in any way warranted any information or documentation, except as specifically provided in this **PDA**. NCN and TPC acknowledge and agree that there is no representation or warranty by **Hydro** or the **Limited Partnership** to NCN or TPC, either express or implied, that the investment by TPC in the **Limited Partnership** will earn a specified rate of return or any return in the short or the long-term or that the arrangements described in this **PDA**, including, without limitation, the investment by TPC in the **Limited Partnership**, will result in the attainment of the goals of NCN. The **Limited Partnership's** actual results could differ materially from the financial projections and projected financial return information prepared for information and due diligence purposes. **Hydro** acknowledges and agrees that there is no representation or warranty by the **Limited Partnership** to **Hydro**, either express or implied, that the investment by **Hydro** in the **Limited Partnership** will earn a specified rate of return or any return in the short or the long-term.

Independent Decisions

24.4 NCN, TPC and **Hydro** acknowledge that there has been extensive information gathered and exchanged between them regarding this **PDA** and the development of the **Wuskwatim Project**. This has included information gathered or commissioned by each of them, information jointly obtained by them, information obtained by or on behalf of NCN and TPC but funded by **Hydro**, and information obtained by NCN and TPC for their own purposes in the conduct of the negotiation of this **PDA**. Each of NCN, TPC and **Hydro**, based on its own due diligence investigations, has independently determined that it is sufficiently informed to conclude this **PDA** and proceed with the development of the **Wuskwatim Project** in the manner and on the terms and conditions set forth in this **PDA**.

Additional Representation and Warranty of NCN and TPC

24.5 In addition to the representations and warranties contained elsewhere in this **PDA**, NCN and TPC each represents and warrants that throughout the negotiations leading to and including the execution and delivery of this **PDA**:

- (a) it has been independently advised by **Advisors** of its choice with respect to all matters, including, without limitation, all due diligence investigations, arising in connection with or dealt with in this **PDA**;
- (b) **Hydro**, on behalf of the **Limited Partnership**, has advanced to it the financial resources required by it to retain **Advisors** of its choice with respect to all matters, including, without limitation, all due diligence investigations, arising in connection with or dealt with in this **PDA**;
- (c) it and its **Advisors** have had the opportunity to ask questions of, and receive answers from **Hydro** and the officers, employees of **Hydro** and **Advisors** and consultants to **Hydro** concerning the transactions contemplated by this **PDA** and to obtain any additional information deemed necessary by it and it and its **Advisors** have been provided with all materials and information requested by them, including any information requested to verify any information furnished to them;
- (d) this **PDA** has been jointly concluded by representatives of it and of **Hydro** and its duly authorized representatives have participated fully in the conclusion of this **PDA**; and
- (e) **NCN** has caused the nature and significance of all major aspects of this **PDA** and the transactions contemplated by this **PDA** to be explained at community meetings open to all **Members** and called for that purpose in accordance with the provisions of Article XXV in order that **Members** could have the opportunity to discuss all relevant matters under negotiation and thereafter make an informed decision with respect to the ratification by **Members** of this **PDA** and the transactions contemplated by this **PDA**.

ARTICLE XXV

RATIFICATION AND EXECUTION

Condition Precedent

25.1 The decision by **Members**, taken in the manner set out in this Article XXV, to support the signing of this **PDA** by **Chief and Council** is a condition precedent to the execution of this **PDA**.

Referendum

25.2 The **Referendum**, consisting of the **Advance Poll** and the **Referendum Poll**, shall be held to determine if a majority of **Members** eighteen years of age and older support the signing of this **PDA** by **Chief and Council**. The **Referendum** shall be conducted by the **Electoral Officer** in accordance with this Article and the **Referendum Rules**. If there is any inconsistency

between the provisions of this Article and the **Referendum Rules**, the provisions of this Article shall prevail.

Public Information Meetings

25.3 Prior to the **Advance Poll**, NCN shall:

- (a) make available at the locations in which the **Advance Poll** is to be held as provided in section 25.7 as many copies of this **PDA** and explanatory materials about this **PDA** as may reasonably be required;
- (b) conduct at least one (1) public information meeting for **Members** on the **Reserve** and at each of South Indian Lake, Leaf Rapids, Thompson, Brandon and Winnipeg and, at each such meeting, fully explain the nature and significance of this **PDA**; and
- (c) have its principal **Advisors** present at at least one of the public information meetings held in each community specified in section 25.3 (b).

Notice of Public Information Meeting

25.4 Written notice of the public information meetings shall be posted at least seven (7) days prior to the meeting in not less than six (6) prominent public locations on the **Reserve**, including the Band Office, the Nursing Station, the Northern Store, the Gilbert MacDonald Arena, the Otetiskiwin Elementary School and the Nisichawayasihk Neyo Ohtinwak Collegiate for meetings on the **Reserve**, in at least one public location in each community off the **Reserve** where public information meetings will be held and announced at least once per week in the following media:

- (a) The Winnipeg Free Press;
- (b) The Winnipeg Sun; and
- (c) The Thompson Citizen.

Announcements also will be made with reasonable frequency on Native Communications Inc. (NCI), or on any other programs on radio or television as considered appropriate by **Chief and Council** and on the public radio station and television channel operating on the **Reserve**.

Contents of Notice

25.5 In each written notice of the public information meetings, NCN shall:

- (a) give notice of the time, date and place of each meeting;

- (b) advise where **Members** can review or obtain copies of this **PDA** and related information; and
- (c) advise **Members** of the time, date and polling places for the **Referendum**, including the **Advance Poll** and the **Referendum Poll**.

Announcements on radio and television will contain such information about the public information meetings as is practical in the circumstances, together with advice as to how further information can be obtained.

Confirmation to Hydro

25.6 Prior to the **Date of the PDA**, **Chief and Council** shall provide to **Hydro** a **Council Resolution**, with a copy of the newspaper notices referred to in section 25.5 attached, confirming that the provisions of sections 25.4 and 25.5 have been fulfilled and that the meetings referred to in section 25.3 were held and the **Referendum** was conducted substantially in accordance with the provisions of this Article 25.

Referendum (Including the Advance Poll)

25.7 There shall be an advance poll (the "**Advance Poll**") not more than four weeks and not less than one week prior to the final poll (the "**Referendum Poll**"). The date of the **Advance Poll** and the date of the **Referendum Poll** shall be determined by **Chief and Council** by **Council Resolution** prior to the dates required herein or in the **Referendum Rules** for the giving of notice. The **Advance Poll** and the **Referendum Poll** shall be held in the following locations:

- (a) on the **Reserve**;
- (b) in South Indian Lake;
- (c) in Thompson;
- (d) in Brandon;
- (e) in Leaf Rapids; and
- (f) in Winnipeg;

The **Advance Poll** shall be conducted substantially in accordance with the procedures for voting on the date of the **Referendum Poll**, with such modifications as reasonably may be necessary.

Eligible Voters

25.8 All **Members** who are eighteen (18) years of age or older shall be entitled to vote in the **Referendum**. A list of eligible voters will be compiled by the **Electoral Officer** in accordance with the **Referendum Rules**.

Independent Observers

25.9 **Chief and Council** may request at least one and not more than three individuals who are not **Members** to attend at the polling places as independent observers to report whether the **Referendum** was conducted in a manner consistent with procedures used in other democratic processes. However, neither a decision by **Chief and Council** not to appoint independent observers, nor the failure of such independent observers to be present at any or each polling place, shall invalidate the **Referendum** or constitute grounds for review or appeal.

Vote

25.10 This **PDA** shall have received a sufficient level of support in the **Referendum** if:

- (a) a majority of all **Members** eligible to vote, vote; and
- (b) a majority of votes cast support the signing of this **PDA** by **Chief and Council**.

Second Referendum

25.11 If in the **Referendum** less than a majority of all **Members** eligible to vote, vote, but a majority of votes cast support the signing of this **PDA** by **Chief and Council**, then, at the option of **Chief and Council**, a second **Referendum** shall be held in accordance with the procedures set out in the **Referendum Rules**, in which event this **PDA** shall have received a sufficient level of support in such second **Referendum** if a majority of votes cast support the signing of this **PDA** by **Chief and Council**.

Results of Referendum or Second Referendum

25.12 Forthwith upon receipt by the **Chief** or by any **Councillor** of the **Referendum Certificate** from the **Chief Electoral Officer** in respect of the **Referendum**, or in respect of a second **Referendum** pursuant to section 49 of the **Referendum Rules**, if applicable, **NCN** shall provide a copy of such **Referendum Certificate** to **Hydro**. **NCN** will also provide copy of such **Referendum Certificate** to **Manitoba**.

Execution of this PDA

25.13 If the **Referendum Certificate** issued by the **Electoral Officer** in respect of the **Referendum**, or in respect of a second **Referendum**, if applicable, evidences that this **PDA** is supported by **Members** as described in section 25.10 in respect of a **Referendum** or as described in section 25.11 in respect of a second **Referendum**, then on a date which is not greater than five business days from the date the applicable **Referendum Certificate** was delivered to the **Chief** or to a **Councillor** pursuant to the **Referendum Rules, NCN and TPC** shall execute this **PDA**.

Amendments to PDA Following Referendum

25.14 **Chief and Council**, by written agreement between the **Parties**, may make and agree to any such revisions or amendments to this **PDA** following the **Referendum** or second **Referendum**, as the case may be, as **Chief and Council** in its discretion considers advisable or appropriate, provided that no revisions or amendments may be made or agreed to that:

- (a) change in any material way any **Fundamental Feature**, unless such change is made pursuant to a determination by an arbitrator in accordance with the provisions of this **PDA** or the **NCN Adverse Effects Agreement**, as applicable; or
- (b) in the opinion of **Chief and Council**, materially and substantially change the arrangements between **Hydro** and **NCN** with respect to the development and operation of the **Wuskwatim Project** as contemplated by this **PDA**;

without first obtaining the support of **Members**, voting by referendum in the manner determined by **Chief and Council** at that time, for such revisions or amendments.

Reviews

25.15 Any reviews associated with the **Referendum** shall be dealt with in accordance with the provisions set out in Part 5 of the **Referendum Rules**.

ARTICLE XXVI

GENERAL PROVISIONS

Further Assurances

26.1 Each of the **Parties** from time to time and without further consideration, shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents, directives, authorizations, and things as another **Party** hereto may reasonably require from time to time for the purpose of giving effect to this **PDA** or more effectively completing any matter provided for in this **PDA** and shall take all such steps as may be reasonably within its power to implement to their full extent the provisions of this **PDA**.

Notice

26.2 All notices and other communication provided for in this **PDA** shall be in writing, and shall be given by personal delivery or sent by registered mail or facsimile, charges pre-paid and confirmed by telephone, to the applicable addresses or facsimile numbers set out in this section, or to addresses or facsimile numbers which a **Party** may from time to time designate to the other **Parties**. Any such communication shall be deemed to have been validly and effectively given on the date of such delivery, if such date is a business day and such delivery has been made during the normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of delivery. The addresses for the **Parties** are:

To **NCN**:

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

To **TPC**:

Taskinigahp Power Corporation
Attention: President
General Delivery
Nelson House MB ROB 1AO
Fax Number: 204-484-2392

To **Hydro**:

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

To the **Limited Partnership**:

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

To the **General Partner**:

5022649 Manitoba Ltd.
Attention: Chairman
3rd Floor, 820 Taylor Avenue
Winnipeg MB R3C 2P4
Fax Number: 204-474-4947

Assignment

26.3 No **Party** may assign its rights or obligations under this **PDA** without the prior written consent of the other **Parties**, provided, however, that no assignment shall relieve the assigning **Party** of its obligations under this **PDA** unless such relief is expressly consented to by the other **Parties**. Any purported assignment made in contravention of this **PDA** shall be null and void and have no legal effect.

No Broker

26.4 Each of the **Parties** represent to the others that all negotiations relating to this **PDA** and the transactions contemplated hereby have been carried on between them directly and without the intervention of any broker, agent or other intermediary in such manner as to give rise to any claim against any of the **Parties** for a brokerage commission, finder's fee or other like payment. Each of the **Parties** agrees to indemnify and save harmless the other **Party** from and against any such claims whatsoever.

Public Announcements

26.5 The **Parties** shall consult with each other before issuing any press release or making any other public announcement with respect to this **PDA** or the transactions contemplated hereby and, except as required by any applicable law or regulatory requirement, no **Party** shall issue any press release or make any such public announcement without the prior written consent of the other **Parties**, which consent shall not be unreasonably withheld or delayed. The **Limited Partnership** will be solely responsible for issuing any press releases or making any public announcements with respect to the **Limited Partnership** or the **Wuskwatim Project** following the **Initial Closing Date**, but where such press release or public announcement is in the opinion of the **Limited Partnership** of significant or material interest to the **Limited Partners** or to **NCN**, the **Limited Partnership** shall make reasonable efforts to consult with the **Limited Partners** or with **NCN**, as the case may be, prior to doing so. No public announcements or press releases not required by law shall be made by **Hydro**, **NCN** or **TPC** without the prior approval of the **Limited Partnership**.

Confidentiality of Information

26.6 Whether or not the transactions contemplated by this **PDA** are consummated,

- (a) **NCN and TPC** each covenants and agrees that it will keep all **Confidential Information** in the strictest confidence and, except as otherwise expressly authorized by **Hydro**, neither **NCN** nor **TPC** will disclose, directly or indirectly, any **Confidential Information**, except as may be required by law; and
- (b) **Hydro, the Limited Partnership and the General Partner** each agree that it will keep confidential any and all information of a confidential nature, whether written, in the form of computer data or in any other form whatsoever, relating to **NCN** or to **TPC**, but not including this **PDA**, or any information that has been released by **NCN** or **TPC** or by **Hydro** or the **Limited Partnership** or the **General Partner** with the consent of **NCN** or **TPC** into the public domain, or otherwise is now or subsequently becomes available to the public through no fault or breach of this **PDA** on the part of **Hydro** or the **Limited Partnership** or the **General Partner** or their respective employees, representatives, agents or advisors, except as may be required by law.

Non-Derogation of Treaty Rights

26.7 Nothing in this **PDA** is intended to alter aboriginal or treaty rights of **NCN** or other aboriginal peoples recognized and affirmed under section 35 of the *Constitution Act, 1982*, except to the extent that, in respect of the **Wuskwatim Project**, **NCN** has expressly consented to this **PDA** and the transactions contemplated by this **PDA** on the terms and conditions set out herein.

No Unreasonable Delay

26.8 No **Party** shall unreasonably withhold or delay any approval or consent required to be given pursuant to this **PDA**, provided that any such consent or approval shall be deemed not to have been unreasonably delayed if it is given as expeditiously as possible, having regard to the circumstances.

Amendments

26.9 This **PDA** may be not be amended or modified in any respect except by written instrument signed by all of the **Parties**.

Enurement

26.10 This **PDA** shall enure to the benefit and be binding upon the **Parties** and their respective successors and permitted assigns.

Certificate of Independent Legal Advice

26.11 The execution of this **PDA** shall be accompanied by an executed certificate of independent legal advice from each of the **Parties** and their respective counsel, which certificate shall be substantially in the form attached hereto as Schedule 26-1 in respect of **NCN** and **TPC**

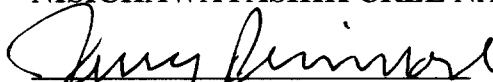
and their counsel and as Schedule 26-2 in respect of **Hydro**, the **Limited Partnership** and the **General Partner** and their counsel.


Counterparts

26.12 This **PDA** may be executed in counterparts, each of which shall constitute an original and all of which taken together shall be deemed to constitute one and the same instrument.

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

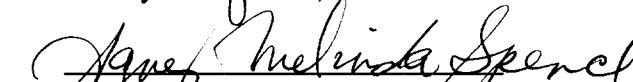
NISICHAWAYASIIK CREE NATION



Jerry Primrose, Chief

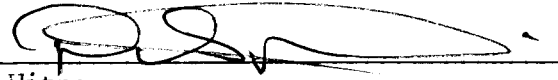

Jimmy Hunter-Spence, Councillor


D'Arcy Linklater, Councillor



Shirley L. Linklater, Councillor

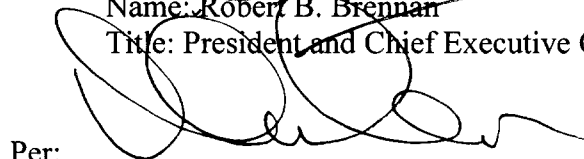

Agnes M. Spence, Councillor



William Elvis Thomas, Councillor


Witness


THE MANITOBA HYDRO-ELECTRIC BOARD

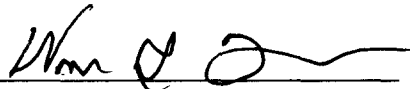
Per: 
Name: Robert B. Brennan
Title: President and Chief Executive Officer

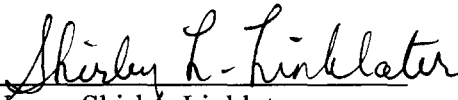
Per: 
Name: Victor H. Schroeder
Title: Chairman


Witness


TASKINIGAHP POWER CORPORATION

Per: 
Name: Jerry Primrose
Title: President


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

Per: 
Name: Shirley Linklater
Title: Secretary-Treasurer

**WUSKWATIM POWER LIMITED
PARTNERSHIP, by its General Partner 5022649
Manitoba Ltd.**

Per: 
Name: Ken R. F. Adams
Title: Chairman

5022649 MANITOBA LTD.

Per: 
Name: Ken R. F. Adams
Title: Chairman