

THIS SECOND SUPPLEMENTARY AGREEMENT dated as of March 31, 2015.

BETWEEN:

NISICHAWAYASIIHK CREE NATION

(hereinafter referred to as “**NCN**”)

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD

(hereinafter referred to as “**Hydro**”)

- and -

TASKINIGAHP POWER CORPORATION

(hereinafter referred to as “**TPC**”)

- and -

5022649 MANITOBA LTD.

(hereinafter referred to as the “**General Partner**”)

- and -

WUSKWATIM POWER LIMITED PARTNERSHIP

(hereinafter referred to as the “**Limited Partnership**”)

(together the “**Parties**”)

PREAMBLE

WHEREAS:

- A. **NCN** and **Hydro**, among others, entered into a Trust Indenture effective March 18, 1996 as part of the arrangements between **NCN**, **Hydro** and others to resolve outstanding issues involving the Northern Flood Agreement (“the 1996 Agreement”) pursuant to which **Hydro**, among other things, issued a bond in the principal amount of forty million (\$40,000,000) dollars to be held by **Nisichawayasihk Trust** in accordance with the **Trust Indenture** (“the Original Bond”);
- B. The Original Bond was sold and reinvested and **NCN** and **Hydro** subsequently entered into an agreement dated November 28, 2013 (the “**One-Year Agreement**”) to provide for interim arrangements while the **Parties** concluded the negotiation of this agreement, including, among other things, an extension of the maturity date of the reinvested bond to December 31, 2014;
- C. As of December 31, 2014, the forty million dollar (\$40,000,000) principal of the reinvested bond has been invested in four bonds of ten million dollars (\$10,000,000) each issued by **Hydro**, with maturities of ten, fifteen, twenty and twenty-five years, respectively (together the “**Hydro Bonds**” and each separately a “**Hydro Bond**”);
- D. The **Parties** entered into the Wuskwatim Project Development Agreement on June 26, 2006 (the “**PDA**”) which was supplemented and amended by the Wuskwatim Project Development Supplementary Agreement made among the **Parties** to this agreement and dated March 15, 2011 (“the **PDA Supplement No. 1**”), together being referred to in this agreement as the “**Amended PDA**”;
- E. The **Parties** have identified the need for further amendments to the **Amended PDA** and certain related agreements that are schedules to the **Amended PDA** to maintain

harmonious relationships between them, their continued joint participation in the Project, and short and long-term benefits for NCN from the Project;

F. The **PDA** authorizes Chief and Council by written agreement between the **Parties** to make revisions or amendments to the **PDA** which Chief and Council in its discretion considers advisable or appropriate as long as there is no material and substantial change to the development or operation of the Wuskwatim Project; and

G. To maintain ownership of thirty-three percent (33%) of the Units in the **Limited Partnership**, TPC invested twenty-one million, one hundred and seventy-eight million dollars (\$21.178 Million) of TPC's Own Invested Cash in the **Limited Partnership** by January 1, 2015, which investment includes a credit from the **Limited Partnership** in favour of TPC in the amount of \$750,000 (the "**Asset Credit**") and which credit has been accepted by NCN in lieu of the transfer by the **Limited Partnership** to NCN of a mobitel and trailer pursuant to Section 7.0 of the **One-Year Agreement**.

NOW THEREFORE the **Parties** agree as follows:

ARTICLE 1- GENERAL

1.1 **Amended PDA Definitions and Interpretation**

Unless otherwise defined in this **PDA Supplement No. 2**, words in bold shall have the same definitions as set out in the **Amended PDA** and the interpretation principles in Article 1 of the **Amended PDA** shall apply to the interpretation of this **PDA Supplement No. 2**.

1.2 **PDA Supplement No. 2 Definitions**

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

“**Nisichawayasihk Trust**” means the trust established pursuant to the Nisichawayasihk Trust Indenture and includes any amalgamated or replacement trust;

“**Nisichawayasihk Trust Indenture**” means the trust indenture dated March 18, 1996 between NCN, **Hydro** and others;

“**One-Year Agreement**” means the agreement dated November 28, 2013 made between NCN and **Hydro**;

“**PDA Supplement No. 1**” means the Wuskwatim Project Development Supplementary Agreement made between NCN, **Manitoba Hydro**, **TPC** the **General Partner** , and **WPLP** dated March 15, 2011;

“**PDA Supplement No. 2**” means this agreement which amends the **PDA** and the **PDA Supplement No. 1**.

ARTICLE 2 - HYDRO BOND

2.1 Hydro Bonds

As long as the Wuskwatim Project continues to generate hydro electricity **Nisichawayasihk Trust** shall, subject to Section 2.2, be entitled to maintain its investment of up to an aggregate capital amount of up to \$40 million in the **Hydro Bonds**, and reinvest the principal amount of each **Hydro Bond** upon maturity of that **Hydro Bond** in one or more replacement bonds issued by **Hydro** (together the “**Replacement Hydro Bonds**” and individually a “**Replacement Hydro Bond**”). (For purposes of reinvestment on maturity, a **Replacement Hydro Bond** will be considered to be a **Hydro Bond** under this Section 2.1.)

2.2 Cabinet Approval

The **Parties** acknowledge that the issuance of a **Replacement Hydro Bond** by **Hydro** is subject to approval by the Lieutenant Governor in Council pursuant to *The Manitoba Hydro Act*, as

may be amended from time to time. On receipt of notice under Section 2.4, **Hydro** shall act diligently and in a timely manner in seeking all necessary approvals to permit the requested issuance.

2.3 Terms of Replacement Bond

The terms and conditions of each **Replacement Bond** will incorporate the following:

- (a) interest will be payable semi-annually on June 30 and December 31 of each year prior to and including maturity, at an interest rate determined in accordance with Section 2.6 and expressed as a percentage per annum;
- (b) interest will not accrue after maturity;
- (c) **Hydro** will maintain a register of the name and address of the registered holder of the **Replacement Bond** at its head office in the City of Winnipeg, Manitoba, Canada
- (d) the **Replacement Bond** is non-transferable, non-assignable, and non-negotiable;
- (e) the **Replacement Bond** is non-redeemable unless mutually agreed to be otherwise;
- (f) the **Replacement Bond** is repayable for its full principal upon maturity; and
- (g) the **Replacement Bond** will rank equally with all other debt obligations of **Manitoba Hydro**.

2.4 Notice of Reinvestment

After consulting with the **Nisichawayasihk Trust** trustees, NCN shall provide **Hydro** with written notice of its intention to reinvest the principal of a maturing Hydro Bond or Replacement Hydro Bonds as the case may be, the amount of the reinvestment and the desired maturity date of the Replacement Hydro Bond not less than one hundred twenty (120) days' prior to the maturity date of the **Hydro Bond** or of a **Replacement Hydro Bond**.

2.5 **Tranches**

Any investment by **Nisichawayasihk Trust** in **Replacement Hydro Bonds** pursuant to this Article 2 may be made in tranches, having different maturity dates, provided that the amount of each tranche shall be a whole multiple of ten million dollars (\$10,000,000.00), and that the term of any **Replacement Hydro Bond** shall be for a term of not more than thirty (30) years with its maturity date being a **Hydro Business Day**.

2.6 **Interest**

The interest rate payable to **Nisichawayasihk Trust** on a **Replacement Hydro Bond** will be determined by the middle quote of three bid price quotes, for a marketable bond of **Hydro** guaranteed by the Province of Manitoba, having the same interest rate and maturity date as the **Replacement Hydro Bond** and including any provincial guarantee fee payable to the Province of Manitoba at that time. The bid price quotes will be supplied in writing by three investment dealers used by the Province of Manitoba to underwrite its securities. The interest rate for each new **Replacement Hydro Bond** will be set by **Hydro** five (5) business days prior to the maturity of an existing **Hydro Bond** or **Replacement Hydro Bond**, as the case may be.

2.7 **Non-Revolving**

Any proceeds of a **Hydro Bond** on its maturity that is not reinvested by **Nisichawayasihk Trust** in a **Replacement Hydro Bond** shall not be eligible for investment in a **Replacement Hydro Bond** at any later date and the aggregate amount that may be invested in **Hydro Bonds** under Section 2.1 shall be reduced by that amount.

ARTICLE 3 - AMENDMENTS TO SUPPLEMENT AGREEMENT NO. 1

3.1 **Amendments to Supplement No. 1:**

Articles I, II, and IV and Schedules 4-1 and 4-2 of PDA Supplement No. 1 are of no further force and effect as of March 31, 2015.

ARTICLE 4- AMENDED AND RESTATED POWER PURCHASE AGREEMENT

4.1 Amendments to Power Purchase Agreement:

The Power Purchase Agreement is replaced by the Amended and Restated Power Purchase Agreement attached hereto as Schedule 4.1, effective April 1, 2014.

ARTICLE 5 - AMENDMENTS TO WUSKWATIM PDA

5.1 Amendments to Amended PDA

The PDA is amended by:

- (a) revising the definitions in Section 1.2, as follows:

(i) by adding:

“Excess Spill Energy Review” means a review of the methodology and assumptions for determining the CRD Wuskwatim Spill Energy and Spill Energy Revenue Adjustment calculations under the Power Purchase Agreement conducted in accordance with Article XVII of this PDA.

(ii) deleting and replacing the definition of Final Closing Date with:

“Final Closing Date” means June 29, 2012.

(iii) by adding:

“Final Investment Date” means January 1, 2015.

(iv) by adding:

“Third Limited Partnership Agreement” means the amended and restated Second Limited Partnership Agreement;

(v) by adding:

“Second NCN Financing Agreement” means the amended and restated NCN financing agreement effective April 1, 2014.

(vi) by adding:

“Second Power Purchase Agreement” means the amended and restated power purchase agreement effective April 1, 2014.

(vii) by adding:

“Second TPC Financing Agreement” means the amended and restated TPC financing agreement effective April 1, 2014.

(viii) by adding the word “First” in front of the words “NCN Financing Agreement”, “Power Purchase Agreement” and “TPC Financing Agreement” and the word “Second” in front of the words “Limited Partnership Agreement”;

(ix) by deleting the definition of “NCN Loan Agreements” and replacing it with:

“NCN Loan Agreements” means the First TPC Financing Agreement and the First NCN Financing Agreement both dated June 28, 2006 which remained in effect up to and including March 31, 2015 and thereafter the Second TPC Financing Agreement and the Second NCN Financing Agreement;

- (b) by adding in the ninth line of Section 3.2 after the word “one” the words “third of the number of directors from time to time”;
- (c) by deleting in Section 4.2 the words “Subject to the Debt Ratio and except as otherwise contemplated by this PDA or by the Limited Partnership Agreement, twenty-five percent (25%) of the Capital Requirements will be funded by equity and seventy-five percent (75%) will be funded by debt”;
- (d) by deleting in Section 4.8 the words “Subject to section 4.9”; by deleting Section 4.9, Debt Ratio;
- (e) by changing in Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9 “TPC Financing Agreement” to “First TPC Financing Agreement”;

- (f) by deleting Section 5.8, Cash Call Credit Facility and deleting the phrase “and the Cash Call Credit Facility” in the second line of Section 5.15
- (g) by changing in Sections 5.10, 5.11 and 5.12 “TPC Financing Agreement” to “Second TPC Financing Agreement”;
- (h) by changing in Sections 5.13 “NCN Financing Agreement” to “Second NCN Financing Agreement”;
- (i) by adding “Excess Spill Energy Reviews” after “Transaction Rate Reviews” in Section 17.1;
- (j) by adding “any amendments thereto” after “Power Purchase Agreement” in the third line of Section 17.2;
- (k) by adding the following as Section 17.18:

Excess Spill Energy Review

17.18 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 Investment Closing, provided there has not been an Excess Spill Energy 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 section 17.15, to review the Spill Energy Revenue Adjustment under the Power Purchase Agreement and provide non-binding recommendations as to what changes, if any, any required to the CRD Wuskwatim Spill Energy and the Spill Energy Revenue Adjustment (as defined in the Power Purchase Agreement) and any related matters as set out in Article 9 of the Power Purchase Agreement.

- (l) by adding the following as Section 17.19:

Process for Spill Energy Rate Review

17.19 Sections 17.7, 17.8, 17.9, 17.13, 17.14, 17.15, 17.16 and 17.17 shall apply with any necessary modifications to any Spill Energy Rate Review;

ARTICLE 6- AMENDED AND RESTATED NCN FINANCING AGREEMENT

6.1 **Amendments to the NCN Financing Agreement:**

The **NCN Financing Agreement** is replaced by the Amended and Restated NCN Financing Agreement attached hereto as Schedule 6.1 effective April 1, 2014.

ARTICLE 7- AMENDED AND RESTATED TPC FINANCING AGREEMENT

7.1 **Amendments to TPC Financing Agreement:**

The **TPC Financing Agreement** is replaced by the Amended and Restated TPC Financing Agreement attached hereto as Schedule 7.1 effective March 31, 2015.

ARTICLE 8- AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

8.1 **Amendments to the Second Amended and Restated Limited Partnership Agreement:**

The **Second Limited Partnership Agreement** is replaced by the Third Amended and Restated Limited Partnership Agreement attached hereto as Schedule 8.1 effective March 31, 2015.

ARTICLE 9 - AMENDMENTS TO PROJECT FINANCING AGREEMENT

9.1 Amendments to Project Financing Agreement:

The **Project Financing Agreement** is amended by deleting Section 8.3 “Financial Covenants” and replacing it with the following:

8.3 Financial Covenants.

So long as any amount owing under the Loan Documents remains unpaid or Hydro has any Credit Facility Commitment under this Agreement, unless Hydro shall otherwise consent, the Limited Partnership agrees that no Distributions shall be made which shall cause the Debt Ratio to exceed 75%.

ARTICLE 10 - CREDIT FOR ASSETS

10.1 In lieu of the transfer by the **Limited Partnership** to **NCN** of a mobitel and trailer pursuant to Section 7.0 of the **One-Year Agreement**, **NCN** acknowledges receipt of the **Asset Credit** made by the **Limited Partnership** to **TPC’s** capital account, which amount the **Parties** agree forms part of **TPC’s Invested Cash** totalling twenty-one million, one hundred and seventy-eight dollars (\$21,178,000.00) as of December 31, 2014.

ARTICLE 11 - HYDRO ANNUITY

11.1 Hydro Annuity.

- (a) Provided that **TPC** has not exercised a **TPC Sale Right**, upon execution of this **PDA Supplement No. 2**, in accordance with the **Deed of Assignment Hydro** shall pay **Taskinigahp Trust** the sum of three million one hundred twelve thousand one hundred thirteen dollars (\$3,112,113.00).

- (b) For so long as **TPC** maintains a minimum investment as a **Limited Partner** in the **Limited Partnership** of not less than twenty-one million one hundred seventy-eight thousand dollars (\$21,178,000.00) in **TPC's Own Invest Cash, Hydro** shall pay to **NCN** the sum of two million five hundred thousand dollars (\$2,500,00.00) per annum on the first day of January in each year commencing January 1 2016, and continuing to and including January 1, 2033.

ARTICLE 12 - GENERAL AND TRANSITIONAL PROVISIONS

12.1 **General**

- (a) Applicable Law

This **PDA Supplement No. 2** will be interpreted, implemented and enforced in accordance with the laws in force in the Province of Manitoba.

- (b) Notices

Any notice or other communication pursuant to this **PDA Supplement No. 2** will be in writing, and given in accordance with Section 26.2 of the **Amended PDA**.

- (c) Enurement

This **PDA Supplement No. 2** will endure to and be binding upon the successors and any permitted assigns of the **Parties**.

- (d) Arbitration

In the event of a dispute arising under or in relation to this **PDA Supplement No. 2**, the dispute resolution process under Article XXI of the **Amended PDA** will apply.

12.2 **Amendment Process**

The **Parties** agree that the amendments in this **PDA Supplement No. 2** do not materially or substantially change the arrangements between them with respect to the operation of the Wuskwatim Project which was developed pursuant to the terms of the **Amended PDA** and has been commercially in operation since June 22, 2012.

[Execution pages follow]

IN WITNESS WHEREOF the parties hereto have executed this Second Supplementary Agreement as of the date first above written.

NISICHAWAYASIIK CREE NATION

Per: *[Signature]*

Per: *[Signature]*

Per: *[Signature]*

Per: *[Signature]*

Per: *[Signature]*

Per: *[Signature]*

Per: *[Signature]*

[Handwritten signatures]

THE MANITOBA HYDRO-ELECTRIC BOARD

Per: *[Signature]*

Per: *[Signature]*

TASKINGAHP POWER CORPORATION

Per: Row Spence

Per: Shirley Linklater

5022649 MANITOBA LTD.

Per: Lorne M. Ford

Per: _____

**WUSKWATIM POWER LIMITED
PARTNERSHIP**

Per: Lorne M. Ford

Per: _____

SCHEDULE 4.1
AMENDED AND RESTATED POWER PURCHASE AGREEMENT

**AMENDED AND RESTATED POWER
PURCHASE AGREEMENT**

between

WUSKWATIM POWER LIMITED PARTNERSHIP

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD

DATED as of APRIL 1, 2014

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AMENDED AND RESTATED POWER PURCHASE AGREEMENT

DATED as of the first day of April, 2014

B E T W E E N:

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

- and -

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

WHEREAS pursuant to the Construction Agreement dated June 28, 2006 between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as project manager, Hydro either directly or indirectly through subcontractors planned, designed, engineered, constructed and commissioned the Wuskwatim Project;

AND WHEREAS the Wuskwatim Project is being operated in conjunction with the Integrated Power System;

AND WHEREAS pursuant to the Interconnection and Operating Agreement entered into between Hydro (Transmission and Distribution Business Unit) and Hydro (Power Supply Business Unit) dated May 4, 2005 and subsequently assigned by Hydro (Power Supply Business Unit) to the Limited Partnership, the Wuskwatim Project will be interconnected to the Integrated Power System;

AND WHEREAS pursuant to the Operations and Maintenance Agreement dated June 28, 2006 between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as contractor, Hydro is managing and will continue to manage the operations and maintenance of the Wuskwatim Project;

AND WHEREAS pursuant to the System Operations and Dispatch Agreement dated June 28, 2006 between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, the Limited Partnership granted to Hydro the right and authority to control and operate the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station;

AND WHEREAS pursuant to the Power Purchase Agreement dated June 28, 2006 the Limited Partnership agreed to sell exclusively to Hydro and Hydro agreed to purchase all of the Net Actual Generation and capacity of the Wuskwatim Generating Station;

AND WHEREAS the parties have agreed to amend and restate the Power Purchase Agreement;.

NOW THEREFORE the Parties agree as follows:

ARTICLE I INTERPRETATION

1.1 Defined Terms.

In this Agreement and the preamble hereto, defined terms shall have the following meanings:

“**Additional Costs**” shall have the meaning specified in Section 3.1(h);

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

“**Adjustments**” shall have the meaning specified in Section 2.4;

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

“Applicable Domestic Transactions” means those Domestic Transactions or portions thereof for energy sold during the Applicable Domestic Transaction Time Period, as determined by Hydro in accordance with Good Utility Practice;

“Applicable Domestic Transaction Time Period” means the twelve (12) month time period comprised of the month for which the applicable Domestic Transaction Rate is being determined plus the prior eleven (11) months;

“Applicable Export Factor Time Period” means the twelve (12) month time period comprised of the month for which the Export Factor is being determined plus the prior eleven (11) months plus the prior eleven (11) months;

“Applicable Long-Term Transactions” means the Long-Term Transactions or portion thereof for energy sold during the Applicable Long-Term Transaction Time Period, as determined by Hydro in accordance with Good Utility Practice;

“Applicable Long-Term Transaction Time Period” means the twelve (12) month time period comprised of the month for which the applicable Long-Term Transaction Rate is being determined plus the prior eleven (11) months;;

“Applicable On-Peak Opportunity Transactions” shall have the meaning specified in Section 5.2;

“Applicable Opportunity Transaction Time Period” means the twelve (12) month time period comprised of the month for which the applicable Opportunity Transaction Rate is being determined plus the prior eleven (11);

“Applicable Opportunity Transactions” means those Opportunity Transactions or portions thereof for energy sold during the Applicable Opportunity Transaction Time Period, as determined by Hydro in accordance with Good Utility Practice; **“Applicable Reliability Organization”** means any reliability standards organization whose standards Hydro has contracted to adhere to or having authority in the region in which the Wuskwatim Project is located;

“**Applicable Transaction Rate**” means the rate equal to the actual weighted average price over a twelve (12) month period, Hydro, as purchaser or as seller, is obligated to pay or is to be paid for the energy and capacity purchased or sold by Hydro;

“**Applicant**” shall have the meaning specified in Section 11.4;

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

“**Business**” means, the business carried on by the Limited Partnership consisting of the development, ownership, operation and maintenance of the Wuskwatim Project and any activities incidental or related thereto;

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

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

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

“**Construction Agreement**” means the agreement dated June 28, 2006 between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as project manager, whereby Hydro, either directly or indirectly through subcontractors, designed, engineered, constructed and commissioned the Wuskwatim Project;

“**Control**” for the purposes of this Agreement, a Person (the “**first Person**”) shall be deemed to be Controlled by another Person or Persons if the Capital Stock of the first Person directly or indirectly held by or for the benefit of the other Person or Persons, acting in concert, other than by way of security only, is either:

(a) more than 50% of the Capital Stock of the first Person outstanding at the time of such determination; or

(b) sufficient to permit the other Person or Persons to replace or elect the majority of the board of directors of the first Person, and “**Controlled**” and “**Controlling**” shall have the corresponding meaning;

“**Dispute**” shall have the meaning specified in Section 11.4;

“**Dispute Notice**” shall have the meaning specified in Section 11.4;

“**Domestic Factor**” shall have the meaning specified in Section 2.11;

“**Domestic Transactions**” means all written agreements or undertakings between Hydro and a Person located in Manitoba, other than an Affiliate of Hydro for the sale of energy and capacity;

“**Domestic Transaction Rate**” shall have the meaning specified in Section 2.13;

“**Energy Calculation**” means the compensation determined to be payable by Hydro to the Limited Partnership for Net Actual Generation under Article 2 or following an Energy Rate Review;

“**Energy Rate**” means the rate per MWh, Hydro will pay to the Limited Partnership in accordance with Sections 2.6, 2.7, 2.8 and 2.9 for the On-Peak Energy and the Off-Peak Energy respectively received by Hydro at the Point of Interconnection;

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

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

“**Equivalent U.S. Dollar Amount**” means, on any day with respect to any amount of Canadian Dollars, the equivalent amount of U.S. Dollars determined by using the Bank of Canada noon

spot rate quoted by the CDCFUSD index in Bloomberg to provide U.S. Dollars in exchange for Canadian Dollars at approximately 12 noon (Toronto time) on such day;

“**Event of Hydro Default**” shall have the meaning specified in Section 10.3.

“**Event of Limited Partnership Default**” shall have the meaning specified in Section 9.1.

“**Excess Spill Energy Review**” means the review of the methodology, assumptions and pricing principles for the determination of Excess Spill Energy Revenue Adjustment pursuant to Section 9.4;

“**Expert**” means an expert appointed pursuant to the PDA to conduct an Energy Rate Review or a Transaction Rate Review;

“**Export Factor**” shall have the meaning specified in Section 2.10;

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

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

“**Generator Units**” means the three units, each consisting of a vertical-shaft, fixed blade propeller-type turbine and vertical umbrella-type generator installed as part of the Wuskwatim Project pursuant to the Construction Agreement and “**Generator Unit**” means any of the Generator Units;

“**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region;

“Governmental Authority” means any federal, provincial, local or other governmental, regulatory or administrative agency, court, commission, department, board or other governmental subdivision, legislature, rulemaking board, tribunal, or arbitration body having jurisdiction over either Party;

“GWh” means gigawatt-hours;

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

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

“Hydro Contractual Obligation” means any provision of any agreement, instrument or written undertaking to which Hydro is a party or by which it or any of its Property is bound, which materially impacts on the Integrated Power System and was entered into without regard to the ownership of the Wuskwatim Project and the existence of this Agreement;

“Hydro Financial Year” means, the financial year of Hydro, currently commencing on April 1 of each calendar year and ending on March 31 of the next calendar year;

“Hydro High Voltage Transmission System” means that portion of the Hydro Transmission System designated by Hydro, as such, from time to time;

“Hydro High Voltage Transmission System Energy Losses” shall have the meaning specified in Section 4.2;

“Hydro Metering Equipment” shall have the meaning specified in Section 4.3;

“Hydro Transmission System” means the transmission facilities owned and operated or operated by Hydro which are a component of the Integrated Power System;

“Initial Closing Date” shall have the meaning ascribed thereto in the PDA;

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

“Initial PPA” means the Power Purchase Agreement dated June 28, 2006 between Hydro and the Limited Partnership;

“In-Service” or “In-Service Date” means the date on which a particular Generator Unit was fully commissioned and came into service as evidenced by a commissioning certificate issued for the unit by Hydro’s commissioning engineer;

“Insufficient Long-Term Transaction Year” shall have the meaning ascribed thereto in Section 5.2;

“Insufficient Transactions” means for the relevant rate calculation either less than a total of 800 GWh of energy bought or sold as Long-Term Transactions applicable at that time or less than a total of 1500 GWh of energy bought or sold as the Opportunity Transactions during the time;

“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 Interconnection and Operating Agreement entered into between Hydro (Transmission and Distribution Business Unit) and Hydro (Power Supply Business Unit) dated May 4, 2005, as amended or replaced from time to time and subsequently assigned by Hydro (Power Supply Business Unit) to the Limited Partnership, whereby the Wuskwatim Project will be interconnected to the Integrated Power System;

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

“Licences” means all authorizations, approvals, consents, registrations and certificates required by any Governmental Authority for the construction, operation or maintenance of the Wuskwatim Project;

“**Limited Partner**” means one or both of Hydro and Taskinigahp Power Corporation as the context requires, in their capacity as limited partners of the Limited Partnership; “**Limited Partnership**” means the Wuskwatim Power Limited Partnership created pursuant to the Initial Limited Partnership Agreement as amended and restated by the second and third Limited Partnership Agreements, for the purposes of owning and directly or indirectly planning, designing, constructing, operating and maintaining the Wuskwatim Project

“**Limited Partnership Agreement**” means the third amended and restated limited partnership agreement amending and restating the second amended and restated limited partnership agreement dated June 28, 2006 and the Initial Limited Partnership Agreement, dated the same day as this Agreement between the General Partner in its capacity as General Partner and Hydro and Taskinigahp Power Corporation as limited partners;

“**Limited Partnership Contractual Obligation**” means any provision of any agreement, instrument or undertaking to which the Limited Partnership is a party or by which it or any of its Property is bound;

“**Long-Term Transaction Rate**” shall have the meaning specified in Section 2.12;

“**Long-Term Transactions**” means all written agreements or undertakings between Hydro and a Person, other than an Affiliate of Hydro, for the purchase or sale of energy physically crossing a Manitoba border and the cross-border capacity, which meets the following criteria:

- (a) Hydro is pursuant to the written agreement or undertaking exporting or importing energy to or from electricity markets outside of Manitoba;
- (b) the written agreement or undertaking was entered into on or after the Initial Closing Date;
- (c) the seller under the written agreement or undertaking has included the commitments made under the written agreement or undertaking, as a factor in the operation, planning and development of its energy system, in order to maintain sufficient resources to meet those commitments, and either:

(i) the time period between the date the written agreement or undertaking is entered into and the date energy is first supplied pursuant to the written agreement or undertaking is at least 365 days in duration; or

(ii) if the time period is less than 365 days, but the written agreement or undertaking has a component whereby energy will be supplied 365 days after the date the written agreement or undertaking is entered into, that component of the written agreement, or undertaking shall be included as part of the Long-Term Transactions;

“Material Adverse Business Effect” means a material adverse effect (or a series of adverse effects, none of which is material in and of itself, but which cumulatively results in a material adverse effect) that precludes or materially restricts the ability of the Limited Partnership from performing any of its obligations under this Agreement;

“MWh” means megawatt-hours

“NCN Total Outstandings” means the Total Outstandings of NCN (as that term is defined in the Second NCN Financing Agreement), plus all accrued and unpaid interest and all other amounts owing under the Dividend Credit Facility (as that term is defined in the Second NCN Financing Agreement);

“Net Actual Generation” means the actual energy generated by the Wuskwatim Project during the applicable period less any energy generated which is used for the Wuskwatim Project’s station service or auxiliaries but includes only the energy generated from each Generator Unit after its In-Service Date;

“Notice” means any written notice, citation, directive, request for information, writ, summons and statement of claim or other communication from any Person other than the Parties;

“Off-Peak Energy” means that portion of the Net Actual Generation delivered by the Wuskwatim Project to the Point of Interconnection during Off-Peak Hours;

“Off-Peak Energy to Date” means the Off-Peak Energy received by Hydro during the period of time from the first day of the applicable Hydro Financial Year to the last day of the applicable

month in that Hydro Financial Year for which the Off-Peak Energy Payment is to be calculated in accordance with sections 2.8 and 2.9 of this Agreement;

“**Off-Peak Hours**” means the period of time which is not included in the On-Peak Hours;

“**Off-Peak Opportunity Transactions**” means those Opportunity Transactions where the sale or purchase of energy and capacity is in respect of energy sold or received only during Off-Peak Hours but if an Opportunity Transaction includes energy sold or received during Off-Peak Hours and On-Peak Hours, only those Opportunity Transactions sold or received during Off-Peak Hours shall be considered Off-Peak Opportunity Transactions;

“**On-Peak Energy**” means that portion of the Net Actual Generation delivered by the Wuskwatim Project to the Point of Interconnection during On-Peak Hours;

“**On-Peak Energy to Date**” means the On-Peak Energy received by Hydro during the period of time from the first day of the applicable Hydro Financial Year to the last day of the applicable month in that Hydro Financial Year for which the On-Peak Energy Payment is to be calculated in accordance with section 2.6 and 2.7 of this Agreement;

“**On-Peak Hours**” means the period of time between 6:00 a.m. and 10:00 p.m. central standard time, Monday through Friday excluding holidays designated by the North American Electric Reliability Council or any successor agency;

“**On-Peak Opportunity Transaction Rate**” shall have the meaning specified in Section 5.2;

“**On-Peak Opportunity Transactions**” means those Opportunity Transactions where the sale or purchase of energy is for energy sold or received only during the On-Peak Hours but if an Opportunity Transaction includes energy sold or received during Off-Peak Hours and On-Peak Hours, only those Opportunity Transactions sold or received during the On-Peak Hours shall be considered On-Peak Transactions;

“**Operations and Maintenance Agreement**” means an agreement dated June 28, 2006 between the Limited Partnership, as owner of the Wuskwatim Project and Hydro, whereby Hydro will manage the operations and maintenance of the Wuskwatim Project, as amended or replaced from time to time;

“**Opportunity Transaction Rate**” shall have the meaning specified in Section 2.14;

“**Opportunity Transactions**” means all agreements or undertakings between Hydro and a Person, other than an Affiliate of Hydro, for the sale or purchase of energy physically crossing a Manitoba border and cross-border capacity which meets the following criteria:

- (a) the agreement or undertaking was entered into on or after the Initial Closing Date;
- (b) the agreement or undertaking is not a Long-Term Transaction; and
- (c) Hydro is pursuant to the agreement or undertaking exporting or importing energy to or from electricity markets outside of Manitoba;

“**PDA**” means for purposes of this Agreement, the Wuskwatim Project Development Agreement dated June 28, 2006 amended by the PDA Supplement No. 1 dated March 15, 2011 and PDA Supplement No. 2 dated as of March 31, 2015;

“**Party**” means either the Limited Partnership or Hydro and “**Parties**” means both the Limited Partnership and Hydro;

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

“**Point of Interconnection**” shall mean the point on the output (high) side of the step up transformer located on the tail race deck of the Wuskwatim Generating Station at which each of the Generator Units connects to one of the three 230 kV transmission lines running from the Wuskwatim Generating Station to the switching station;

“**Pricing Criteria**” shall have the meaning specified in Section 6.3;

“**Pricing Principle**” shall have the meaning specified in Section 6.2;

“**Property**” means, with respect to any Person, any interest of such Person in any land or property or asset of every kind, wherever situate, whether now owned or hereafter acquired,

whether real or immovable, personal, movable or mixed, tangible or corporeal, intangible or incorporeal, including Capital Stock in any other Person;

“**Rate Review**” means an Energy Rate Review, an Excess Spill Energy Review or a Transaction Rate Review, as the case may be and “**Rate Reviews**” means all of them;

“**Reply**” shall have the meaning specified in Section 11.5;

“**Respondent**” shall have the meaning specified in Section 11.5;

“**Second NCN Financing Agreement**” means the amended and restated NCN Financing Agreement dated April 16, 2015;

“**Second TPC Financing Agreement**” means the amended and restated TPC Financing Agreement dated April 16, 2015;

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

“**TPC Total Outstandings**” means the Total Outstandings of TPC (as that term is defined in the Second TPC Financing Agreement), plus all accrued and unpaid interest and all other amounts owing by NCN under the Equity Credit Facility (as that term is defined in the Second TPC Financing Agreement);

“**Term**” means the initial and subsequent term of this Agreement as specified in Section 2.19;

“**Transaction Rate Review**” means a review conducted in accordance with Article XVII of the PDA of the determination, allocation and Adjustments made by Hydro pursuant to Article 2 of this Agreement in the calculation of the Long Term Transaction Rate, the Domestic Transaction Rate and the Opportunity Transaction Rate;

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

“**U.S. Dollars** means lawful money of the United States of America;

“**Wuskwatim Generating Station**” shall have the meaning ascribed thereto in the PDA; and

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

1.2 Interpretation.

This Agreement shall be interpreted in accordance with the following:

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

1.3 Severability.

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

1.4 Entire Agreement.

This Agreement supersedes all prior agreements, understandings, negotiations and discussions, of the Parties, whether oral or written, prior to the date of this Agreement.

1.5 Waiver.

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

1.6 No Presumption.

The Parties have endeavoured to ensure that the terms of this Agreement are as clear and unambiguous so unless expressly provided there shall be no presumption in favour of or against any Party.

1.7 Governing Law.

This Agreement shall be governed by, and interpreted in accordance with, the applicable Laws of Manitoba and Canada.

1.8 Incorporation of Schedules.

The following schedules shall be incorporated into and form an integral part of this Agreement:

Schedule A	-	Arbitrator's Undertaking
Schedule B	-	Notices

1.9 Acknowledgement.

The Parties acknowledge that:

- (a) the Limited Partnership is a limited partnership formed under the Laws of Manitoba, and each limited partner is only liable for its respective liabilities or losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership and the limited partner's pro rata share of any undistributed income;
- (b) the obligations of the Limited Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners, their successors and assigns, and that resort shall only be had to the property of the Limited Partnership or the property of its General Partner;
- (c) the General Partner is the sole general partner of the Limited Partnership; and
- (d) nothing in this Agreement shall be deemed to detract from or limit or restrict in any way the limited liability of any Limited Partner.

ARTICLE II

SALE AND PURCHASE OF ENERGY

2.1 Net Actual Generation and Charge.

Subject to the terms and conditions of this Agreement, the Limited Partnership agrees to sell and Hydro agrees to purchase the Net Actual Generation and capacity of the Wuskwatim Project and the Limited Partnership shall be compensated by Hydro for the Net Actual Generation received by Hydro at the Point of Interconnection determined in accordance with Sections 2.2 and 2.3 and capacity in accordance with Section 2.4.

2.2 Energy Calculations – Financial Years 2014/15 to 2023/24.

Subject to the terms and conditions of this Agreement including any Adjustments, Rate Reviews and the set-off of any amounts the Limited Partnership is obligated to pay Hydro pursuant to the provisions of Section 3.1(j), for the Hydro Financial Years 2014/15 to 2023/24 the Limited Partnership shall be compensated by Hydro for the Net Actual Generation received by Hydro at the Point of Interconnection, on a Canadian Dollar per MWh basis, determined by calculating the On-Peak Energy in accordance with Section 2.6, the Off-Peak Energy in accordance with Section 2.8, the On-Peak Energy to Date, the Off-Peak Energy to Date, the Export Factor in

accordance with Section 2.10, the Domestic Factor in accordance with Section 2.11, the Long Term Transaction Rate in accordance with Section 2.12, the Domestic Transaction Rate in accordance with Section 2.13, the Opportunity Transaction Rate in accordance with Section 2.14 and the Spill Energy Revenue Adjustment in accordance with Article IX.

2.3 Energy Calculations – Financial Years 2024/25 and Onward.

Subject to the terms and conditions of this Agreement including any Adjustments, Rate Reviews and the set-off of all amounts the Limited Partnership is obligated to pay Hydro pursuant to the provisions of Section 3.1(j), for the Hydro Financial Years commencing April 1, 2024 and each Hydro Financial Year thereafter the Limited Partnership shall be compensated by Hydro for the Net Actual Generation received by Hydro at the Point of Interconnection, on a Canadian Dollar per MWh basis, determined by calculating the On-Peak Energy in accordance with Section 2.7, the Off-Peak Energy in accordance with Section 2.9, the On-Peak Energy to Date, the Off-Peak Energy to Date, the Export Factor in accordance with Section 2.10, the Long Term Transaction Rate in accordance with Section 2.12, the Opportunity Transaction Rate in accordance with Section 2.14, and the Spill Energy Revenue Adjustment in accordance with Article IX.

2.4 Allocations and Adjustments.

When making the Energy Calculations in Sections 2.2 and 2.3 Hydro, acting reasonably shall make the allocations and adjustments permitted by this Agreement, including in the case of energy exported and sold across Manitoba borders, (i) the portion of the price, if any, payable for capacity attributable to the portion of the energy that physically crossed a Manitoba border; and (ii) the actual costs or expenses incurred which were reasonably necessary to provide access to export markets or facilitate Hydro entering into export markets, but shall not include Hydro's administrative and general overhead costs and expenses or any costs or expenses for which Hydro has been reimbursed pursuant to other provisions of this Agreement ("the **Adjustments**");

2.5 Hydro to Provide Monthly Information to the Limited Partnership.

Hydro shall, within ten (10) Business Days of the last day of each month during each Hydro Financial Year except in the last month, in which case, within fifteen (15) Business Days, provide the Limited Partnership with written notice of:

- (a) the Domestic Transaction Rate;
- (b) the Long Term Transaction Rate;
- (c) the Opportunity Transaction Rate; and
- (d) the amounts paid for On-Peak Energy and Off-Peak Energy for the month less any Adjustments or set-off pursuant to Section 3.1(j);

2.6 On-Peak Energy Payment - Financial Years 2014/15 to 2023/24.

For each month in a Hydro Financial Year from April 1, 2014 to March 31, 2024, Hydro shall pay to the Limited Partnership for On-Peak Energy an amount equal to the product of the monthly Long Term Transaction Rate, the On Peak Energy to Date, and the Export Factor plus the product of the Domestic Transaction Rate, the On-Peak Energy to Date and the Domestic Factor, minus the sum of the amounts paid or payable by Hydro for On-Peak Energy to the end of the prior month (“**On-Peak Energy Payments to Date**”). The calculation of the amount payable for On-Peak Energy under this Section 2.6 may be expressed by the following formula:

$$(A \times B \times C) + (D \times B \times E) - \text{On-Peak Energy Payments to Date}$$

Where:

A = Long Term Transaction Rate

B = On Peak Energy to Date

C = Export Factor

D = Domestic Transaction Rate

E = Domestic Factor

2.7 On- Peak Energy Payments - Financial Years 2024/25 and Onward.

For each month in the Hydro Financial Year commencing April 1, 2024 and thereafter Hydro shall pay to the Limited Partnership for On-Peak Energy an amount equal to the product of the monthly Long Term Transaction Rate, the On Peak Energy to Date, and the Export Factor minus

the On-Peak Energy Payments to Date. The calculation of the amount payable for On-Peak Energy under this Section 2.7 may be expressed by the following formula:

$$(A \times B \times C) - \text{On-Peak Energy Payments to Date}$$

Where:

A = Long Term Transaction Rate

B = On Peak Energy to Date

C = Export Factor

2.8 Off-Peak Energy Payments - Financial Years 2014/15 to 2023/24.

For each month in a Hydro Financial Year from April 1, 2014 to March 31, 2014, Hydro shall pay to the Limited Partnership for Off-Peak Energy an amount equal to the product of the Opportunity Transaction Rate, the Export Factor and the Off Peak Energy To Date, plus the product of the Domestic Transaction Rate, the Off-Peak Energy to Date and the Domestic Factor, minus the sum of the amounts paid or payable by Hydro for Off-Peak Energy to the end of the prior month (“**Off-Peak Energy Payments to Date**”). The calculation of the amount payable for Off-Peak Energy under this Section 2.8 may be expressed by the following formula:

$$(F \times G \times C) + (D \times G \times E) - \text{Off-Peak Energy Payments to Date}$$

Where:

C = Export Factor

D = Domestic Transaction Rate

E = Domestic Factor

F = Opportunity Transaction Rate

G = Off-Peak Energy to Date

2.9 Off-Peak Energy Payment Financial Years 2024/25 and Onward.

For each month in the Hydro Financial Years commencing April 1, 2024 and thereafter, Hydro shall pay to the Limited Partnership for Off-Peak Energy an amount equal to the product of the Opportunity Transaction Rate, the Export Factor and the Off-Peak Energy To Date minus the Off-Peak Energy Payments to Date. The calculation of the amount payable for Off-Peak Energy under this Section 2.9 may be expressed by the following formula:

$$(F \times G \times C) - \text{Off-Peak Energy Payments to Date}$$

Where:

C = Export Factor

F = Opportunity Transaction Rate

G = Off-Peak Energy to Date

2.10 Export Factor.

The “**Export Factor**” means a factor that is equal to the weighted average proportion of Net Energy Delivered by the Integrated Power System over a twelve (12) month period that is exported by Hydro, during that twelve (12) month period. The monthly Export Factor shall be calculated for each month during the Hydro Financial Year using the following formula:

$A / (A + B)$ where,

A is equal to the total energy generated by Hydro related to the export sales that physically crossed a Manitoba border; and

B is equal to the total energy generated by Hydro delivered in Manitoba

For any period from and after April 1, 2024 the monthly Export Factor shall be one (1.00).

2.11 Domestic Factor.

The Domestic Factor means a factor equal to one (1.00) minus the monthly Export Factor for each month during the Hydro Financial Year.

2.12 Long-Term Transaction Rate.

The “**Long-Term Transaction Rate**” means the Applicable Transaction Rate for Long-Term Transactions determined for each month during a Hydro Financial Year for the applicable Long Term Transaction Time Period determined in the following manner:

(a) adjustments to reflect the price at the Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable Long-Term Transactions;

(b) the price paid or payable for Applicable Long-Term Transactions determined in Canadian Dollars per MWh, and if the payments are in U.S. Dollars for any of the Applicable Long Term Transactions the amounts shall be converted to Canadian Dollars pursuant to Section 2.15 after the adjustments referred to in Section 2.12 (b) using the average Equivalent Canadian Dollar Amount for the month during which the entitlement to be paid arises; and

(c) the Long-Term Transaction Rate expressed in Canadian Dollars per MWh calculated by dividing the total net amount that Hydro is entitled to be paid or is obligated to pay for the Applicable Long-Term Transactions by the total energy imported or exported as Applicable Long-Term Transactions.

2.13 Domestic Transaction Rate.

The “**Domestic Transaction Rate**” means the Applicable Transaction Rate for Domestic Transactions determined for each month during a Hydro Financial Year for the Applicable Domestic Transactions expressed in Canadian Dollars per MWh and calculated by dividing the total net amount Hydro is entitled to be paid or is obligated to pay for the Applicable Domestic Transactions by the total energy delivered as Applicable Domestic Transactions.

2.14 Opportunity Transaction Rate.

The “**Opportunity Transaction Rate**” means the Applicable Transaction Rate for Opportunity Transactions determined for each month during a Hydro Financial Year for the applicable Opportunity Transaction Time Period determined in the following manner:

(a) adjustments to reflect the price at a Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable Opportunity Transactions;

(b) the price paid or payable for Applicable Opportunity Transactions determined in Canadian Dollars per MWh, and if the payments are in U.S. Dollars for any of the Applicable Opportunity Transactions the amounts shall be converted to Canadian Dollars in accordance with Section 2.15 after the adjustments referred to in Section 2.16 (b) using the average Equivalent Canadian Dollar Amount for the month during which the entitlement to payment arises; and

(c) the Opportunity Transaction Rate expressed in Canadian Dollars per MWh and calculated by dividing the total net amount Hydro is entitled to be paid or obligated to pay for the Applicable Opportunity Transactions by the total energy delivered as Applicable Opportunity Transactions.

2.15 U.S. Dollar Conversion Option.

The Limited Partnership can if it has provided written notice to Hydro on or before the last Business Day of any particular month require that a percentage not exceeding fifty percent (50%) of the amount that would otherwise be billed to Hydro in Canadian Dollars, for the Net Actual Generation received by Hydro during that month, be converted to U.S. Dollars, by reference to the Equivalent U.S. Dollar Amount as of the last Business Day of that month and that amount shall be paid to the Limited Partnership, in U.S. Dollars, by the dates specified in accordance with Section 8.1(3).

2.16 Acknowledgement of Limited Partnership.

The Limited Partnership expressly acknowledges and agrees that:

- (a) the compensation to be paid under this Agreement entitles Hydro to receive all the capacity and the energy from the Wuskwatim Project;
- (b) the rates and compensation to be paid in this Agreement, subject to Section 2.20 is based on the Net Actual Generation actually received by Hydro at the Point of Interconnection; and

- (c) the Limited Partnership is not entitled to an additional payment or separate rate for the capacity of the Wuskwatim Project which Hydro is entitled to receive pursuant to this Agreement.

2.18 Insufficiency of Capacity, Disruption or Failure of the Hydro Transmission System.

Notwithstanding any other provision of this Agreement, if the Net Actual Generation cannot be generated and delivered to the Point of Interconnection primarily due to insufficient capacity of the Hydro Transmission System or the disruption to or failure of the Hydro Transmission System and as a direct consequence thereof, water is spilled at the Wuskwatim Project spillway, Hydro shall be deemed for the purposes of this Agreement to have received the energy that could have been generated from the water that was spilled at the Wuskwatim Project spillway during that time period less the applicable Hydro High Voltage Transmission System Energy Losses. This Section 2.18 shall not apply and Hydro shall not be deemed for the purposes of this Agreement or otherwise to have received energy that was not generated and delivered to the Point of Interconnection if the insufficient capacity of the Hydro Transmission System, disruption to or failure of the Hydro Transmission System occurred as a result of or was primarily due to: (i) a breach by the Limited Partnership of any provision of the Limited Partnership's Contractual Obligation; or (ii) any act or omission reasonably associated with the provisions of the Construction Agreement, the System Operations and Dispatch Agreement or the Operations and Maintenance Agreement, including without limiting the generality of the foregoing in respect of services or work performed or to be performed by Hydro under the provisions of those Agreements or the breach by Hydro of any provision of those Agreements. If this Section 2.18 is applicable, Hydro shall provide to the Limited Partnership a calculation of the amount of energy that could have been generated and delivered during the applicable time period from the water that was spilled using the best information and data available and Hydro shall be required to pay to the Limited Partnership the amount that would otherwise be determined to be owing pursuant to the provisions of this Agreement (after all set-offs, deductions and adjustments provided for in this Agreement including adjustment for the Hydro High Voltage Transmission System Energy Losses applicable for the period of time during which water was spilled) if that amount of energy had been generated and delivered to the Hydro Transmission System during that period of time from the water that was spilled. The Limited Partnership expressly acknowledges that the risk of the Limited Partnership not being able to generate and deliver energy to the Point of

Interconnection from all other matters or circumstances is borne solely by the Limited Partnership.

2.19 Term.

(a) The Term of this Agreement shall be from April 1, 2013 to March 31, 2038 unless extended or terminated pursuant to the provisions of this Agreement. The Term shall automatically be extended for periods of twenty-five (25) years each starting on April 1, 2038 subject to the following conditions being in effect for the period of time for which the Term is to be extended:

(i) Hydro or an Affiliate of Hydro must have an agreement with the Limited Partnership to operate and dispatch the Wuskwatim Project on substantially the same terms and conditions as those contained in the System Operations and Dispatch Agreement, or the Term shall be extended, subject to such amendments to the terms and conditions of this Agreement as Hydro acting reasonably may require if Hydro or an Affiliate of Hydro is not operating and controlling the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station on substantially the same terms and conditions as those contained in the System Operations and Dispatch Agreement or if any other Person is operating and controlling the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station; and

(ii) Hydro or an Affiliate of Hydro must have an agreement with the Limited Partnership to maintain and operate the Wuskwatim Project on substantially the same terms and conditions as those contained in the Operations and Maintenance Agreement, or the Term shall be extended, subject to such amendments to the terms and conditions of this Agreement as Hydro acting reasonably may require if Hydro or an Affiliate of Hydro is not operating and maintaining on substantially the same terms and conditions in the Operations and Maintenance Agreement or if any other Person is maintaining and operating the Wuskwatim Project.

(b) Upon expiry of a Term or upon the termination of this Agreement, Hydro shall have no future or further obligation to purchase the Net Actual Generation and capacity of the Wuskwatim Generating Station or to make any further payments to the Limited Partnership and except for Hydro's and the Limited Partnership's rights and obligations arising prior to the expiry of the

Term, the rights and obligations of the Parties under this Agreement shall end and the Limited Partnership shall be entitled to sell the energy and capacity of the Wuskwatim Generating Station to another Person. This Agreement shall not be construed to provide a residual value to either the Limited Partnership or Hydro or to any Person, for the right to use or benefit from the Limited Partnership's or Hydro's Property or the Integrated Power System following the expiry of the Term.

ARTICLE III AFFIRMATIVE COVENANTS

3.1 Covenants.

During the Term of this Agreement the Limited Partnership agrees to be bound by and to perform each of the following affirmative obligations:

(a) **Licences.** The Limited Partnership shall seek, obtain, maintain, comply with and as necessary, review and modify from time to time, at the Limited Partnership's sole expense, the Licences.

(b) **Maintenance and Operation of the Wuskwatim Project.** The Limited Partnership shall operate, maintain and repair at the Limited Partnership's sole expense, the Wuskwatim Project in accordance with the reasonable guidelines, procedures, decisions, practices and policies of Hydro (or any Affiliate of Hydro) as amended from time to time and communicated by Hydro to the Limited Partnership and in accordance with the provisions of the Limited Partnership Contractual Obligations.

(c) **Applicable Reliability Organization and Governmental Authority.** The Limited Partnership shall at the Limited Partnership's sole expense:

(i) cooperate to a reasonable extent with Hydro in fulfilling Hydro's duties and obligations (or the duties and obligations of any Affiliate of Hydro) as a participant in the Applicable Reliability Organization and pursuant to the Hydro Contractual Obligations, as amended from time to time in the same manner and to the same extent as Hydro (or any Affiliate of Hydro), as Hydro may advise;

(ii) cooperate with and provide in a timely manner any and all information or data required by the Applicable Reliability Organization or by Hydro for the Applicable Reliability Organization and any other necessary approvals related to the Wuskwatim Project, as Hydro may advise;

(iii) comply with the Applicable Reliability Organization procedures, decisions and policies, as Hydro may advise;

(iv) be bound by those requirements, decisions and policies of the Applicable Reliability Organization, as Hydro may advise, and those Hydro Contractual Obligations as amended from time to time, in the same manner and to the same extent as Hydro (or any Affiliate of Hydro), as Hydro may advise; and

(v) reimburse Hydro for actual costs and expenses imposed on Hydro (or any Affiliate of Hydro) by the Applicable Reliability Organization or Government Authority or pursuant to the Hydro Contractual Obligations which are associated with this Agreement or the Wuskwatim Project and any filing fees incurred by Hydro as a result of the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement.

(d) **Point of Interconnection.** The Limited Partnership shall at the Limited Partnership's sole expense:

(i) cooperate with Hydro in maintaining the interconnection of the Wuskwatim Project to the Integrated Power System, and comply with all provisions of the Interconnection and Operating Agreement;

(ii) subject to Articles 2.10 to 2.13 of the PDA, modify the design of the Wuskwatim Project at any time in a manner consistent with Hydro's direction to ensure the interconnection and synchronous operation of the Wuskwatim Project with the Integrated Power System will be safe and reliable and will not adversely affect the Integrated Power System or any other utility's system, or services provided to Hydro's customers; and

(iii) cause the Net Actual Generation to be delivered to Hydro at the Point of Interconnection.

(e) **Fines and Penalties.** If fees, levies, fines, penalties, or costs or expenses are assessed against Hydro by any Governmental Authority due to non-compliance by the Limited Partnership of any provision of this Agreement or reasonably attributed to by the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement unless same relates to an Event of Hydro Default, the Limited Partnership shall indemnify and hold Hydro harmless against any and all losses, liabilities, damages, and claims suffered or incurred by Hydro, including claims for indemnity or contribution made by third parties against Hydro.

(f) **Taxes and Fees.** Subject to Section 3.1(h) the Limited Partnership shall be responsible for and pay all present or future federal, provincial, municipal or other lawful taxes (for greater certainty this does not include any income taxes that may be payable by Hydro), duties, levies or fees, which without limiting the generality of the foregoing shall include any value added tax or similar taxes, imposed directly or indirectly, which are applicable to Hydro or the Limited Partnership or the Wuskwatim Project by reason of the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement without any reimbursement in whole or in part from Hydro or Hydro shall, if such amounts have been paid by it, be entitled to bill the Limited Partnership in accordance with Article VIII and receive payment.

(g) **Additional Costs.** If the application of any Laws (including any interpretation thereof) causes Hydro to be liable for additional taxes (for greater certainty this does not include any income taxes that may be payable by Hydro),, fees or assessments (“**Additional Costs**”) reasonably attributable to the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement, Hydro may bill the Limited Partnership monthly for such Additional Costs pursuant to Article VIII and receive payment on account of these Additional Costs. These Additional Costs will be

calculated so as to place Hydro in the same economic position (considering the timing of the Additional Costs and any expected benefits resulting from said taxes, fees, assessments by third parties) in which it would have been if it had not be liable for the Additional Costs.

(h) **Environmental Credits**. The Limited Partnership shall obtain in its own name any and all environmental credits necessary to operate the Wuskwatim Project in compliance with Laws. Hydro acknowledges that any environmental credits will be assets of or credited to the Limited Partnership as applicable, conditional on the value of such environmental credits having not already been included in the Energy Calculation.

(i) **Dispatch**. The Limited Partnership agrees that the Wuskwatim Generating Station shall at all times be operated and dispatched by Hydro in accordance with the guidelines, procedures, decisions, practices and policies of Hydro's (or any Affiliate of Hydro) as amended from time to time and Hydro's Contractual Obligations as amended from time to time and communicated by Hydro to the Limited Partnership and in accordance with the provisions of the System Operations and Dispatch Agreement, the Interconnection and Operating Agreement and the Operations and Maintenance Agreement.

(j) **Fee**. Commencing the month following the month in which both the NCN Total Outstandings and the TPC Total Outstandings have been repaid in full the Limited Partnership shall pay Hydro for each month a fee equal to thirty-six percent (36%) of the Energy Calculation payable by Hydro for that month in accordance with the provisions this Agreement plus all present or future Federal, Provincial, Municipal or other lawful taxes, (for greater certainty this does not include any income taxes that may be payable by Hydro) duties, levies or fees, which without limiting the generality of the foregoing should include any value added tax or similar taxes, imposed directly or indirectly on Hydro or the Limited Partnership in respect of the fee. This fee is to compensate Hydro for:

(i) assuming the risk that the energy purchased pursuant to this Agreement cannot be sold as a Long-Term Transaction;

- (ii) not requiring the Limited Partnership pursuant to this Agreement to supply a minimum amount of On-Peak Energy;
- (iii) costs of lost opportunities arising from the utilization of Hydro's transmission tie-line capacity as a consequence of Hydro's purchase of energy and capacity pursuant to this Agreement at the Point of Interconnection;
- (iv) assuming the transmission risk in Manitoba associated with Hydro's acceptance of the delivery of all of the energy pursuant to this Agreement at the Point of Interconnection for resale at a different delivery point; and
- (v) the suspension of marketing and certain other fees that would have otherwise been payable under the terms of the Initial PDA, had it remained in effect, implemented during the period loans are outstanding under the NCN Financing Agreement and the TPC Financing Agreement.

Hydro may bill this fee to the Limited Partnership or set it off against the amount otherwise due to the Limited Partnership pursuant to the provisions of this Agreement.

(k) **Records**. The Limited Partnership shall prepare and maintain or cause to be prepared and maintained complete and accurate operating and other records as Hydro may from time to time request, acting reasonably. This shall include all records required by any Applicable Reliability Organization to maintain accredited capacity for the Wuskwatim Generating Station. Without limiting the generality of the foregoing the Limited Partnership shall on written notice from Hydro provide or cause to be provided all documents and information necessary to meet the accreditation requirements for the Wuskwatim Generating Station of any Applicable Reliability Organization during the Term of this Agreement. The Limited Partnership acknowledges that Hydro may release such information and documentation to the Applicable Reliability Organization in respect of any application or maintenance of accredited capacity for the Wuskwatim Generating Station. In addition Hydro shall have access to inspect and test such metering and other recording equipment and operating records as may be required in respect of any accreditation process.

(l) **Inspection**. The Limited Partnership shall provide Hydro and its representatives with access to the Wuskwatim Project and the records relating to the Wuskwatim Project including all records required to be prepared and maintained in accordance with Section 3.1(k) of this Agreement and Hydro shall be entitled to make and retain copies of all such records. The inspection of the Wuskwatim Project and the review of the records shall not relieve the Limited Partnership of any of its obligations under this Agreement.

3.2 Acknowledgement and Waiver.

The Limited Partnership expressly acknowledges and agrees that the covenants in section 3.1 are obligations solely of the Limited Partnership and that while Hydro may be a party to other agreements with the Limited Partnership, in respect of certain matters related to the aforesaid covenants, the Limited Partnership shall be bound by and shall be responsible for the performance of the aforesaid covenants in accordance with the provisions of this Agreement and any breach of the aforesaid covenants shall be an Event of Limited Partnership Default in accordance with the provisions of this Agreement. The Limited Partnership waives any right to:

- (a) defend a claim by Hydro that an Event of Limited Partnership Default has occurred under the provisions of this Agreement; or
- (b) to claim Hydro contributed to the breach of any provision of this Agreement; or
- (c) refuse to make any payment that is required to be made pursuant to the provisions of this Agreement or to not comply with any other provision of this Agreement;

due to or as a result of an act or omission in any way associated with the provisions of the Construction Agreement, the System Operations and Dispatch Agreement, the Operations and Maintenance Agreement or the Interconnection and Operating Agreement, and without restricting the generality of the foregoing would include any breach by Hydro of any provision of those agreements or the supply of services by Hydro or the performance of work by Hydro under the provision of those agreements. The waiver of rights by the Limited Partnership does not extend to any act or omission by Hydro under any of the aforesaid agreements, for which Hydro is found to be liable under those agreements due to Hydro's gross negligence or willful misconduct.

**ARTICLE IV
METERING**

4.1 Determination of Energy Delivered.

The amount of On-Peak Energy and Off-Peak Energy delivered by the Limited Partnership to the Point of Interconnection and received by Hydro during any particular time period in the Hydro Financial Year, shall for the purposes of this Agreement, including Sections 2.2 and 2.3, be determined to be equal to:

- (a) the quantum of energy measured by metering equipment at or near the Point of Interconnection, in accordance with Sections 4.3, 4.4, 4.5, 4.6 and 4.7 for any particular period of time; reduced by
- (b) the Hydro High Voltage Transmission System Energy Losses applicable for that period of time.

4.2 Transmission System Losses

The Hydro High Voltage Transmission System Energy Losses for any particular period in the Hydro Financial Year shall be determined by Hydro and provided to the Limited Partnership within ten (10) Business Days of the last day of the particular period and shall be expressed as a percentage equal to:

- (a) the energy generated and delivered to Hydro's High Voltage Transmission System for that particular period of time during that applicable Hydro Financial Year, from all of the hydraulic and thermal electric generation facilities that form part of the Integrated Power System, (which shall be determined by Hydro measuring the generation and delivery of that energy expressed in GWh); less
- (b) the energy delivered from the Hydro High Voltage Transmission System, during that particular period of time in the Hydro Financial Year, to other parts of the Integrated Power System, (which shall be determined by Hydro measuring that energy at exit points, selected by Hydro, from the Hydro High Voltage Transmission System, expressed in GWh); divided by

(c) the amount determined in 4.1.

4.3 Metering Equipment.

Subject to Section 4.6 Hydro shall provide, install, operate, maintain and own and/or control metering equipment of revenue quality (the “**Hydro Metering Equipment**”), for the Wuskwatim Generating Station at or near the Point of Interconnection the exact location of which shall be determined by Hydro. The Limited Partnership shall reimburse Hydro for all actual costs and expenses incurred by Hydro under this Article IV, including those associated with the operation, maintenance and administration of the Hydro Metering Equipment and the provision of metering data to the Limited Partnership.

4.4 Operation and Maintenance of Metering Equipment

The Hydro Metering Equipment shall be installed, calibrated, repaired, replaced, maintained and tested in accordance with the provisions of the *Electricity and Gas Inspection Act* (Canada) as amended from time to time and any reasonable guidelines, procedures, decisions, practices and policies of Hydro. The Limited Partnership shall provide and maintain without charge, convenient, accessible and safe space at or near the metering point for Hydro Metering Equipment, which shall be in the care of and at the risk of the Limited Partnership. Unless Hydro shall otherwise advise the Limited Partnership, Hydro shall in accordance with any guidelines, procedures, decisions, practices and policies of Hydro read the meters and supply such meter readings to the Limited Partnership no later than the end of the third Business Day of each month. Metering records shall be available at all reasonable times to the Limited Partnership.

4.5 Hydro Access to and Testing of Metering Equipment

Authorized employees and agents of Hydro shall at reasonable times have free and uninterrupted access to the Wuskwatim Project for the purpose of reading and conducting tests on the Hydro Metering Equipment. Hydro may test, calibrate, maintain, remove and replace the Hydro Metering Equipment at any time. Hydro shall at the Limited Partnership’s expense, inspect and test the Hydro Metering Equipment upon installation and at least once every two (2) years, thereafter. If requested to do so by the Limited Partnership, Hydro shall inspect or test metering equipment more frequently than every two (2) years. Hydro shall give reasonable notice of the

time when any inspection or test shall take place, and the Limited Partnership may have representatives present at the test or inspection. Unless provided otherwise by the *Electricity and Gas Inspection Act* (Canada) or other Laws, if Hydro Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at the Limited Partnership's expense, in order to provide accurate metering. If Hydro Metering Equipment fails to register, or if the measurement made by Hydro Metering Equipment during a test varies by more than one percent (1%) from the measurement made by the standard meter used in the test, adjustment shall be made correcting all measurements made by the inaccurate meter for (i) the actual period during which inaccurate measurements were made, if the period can be determined, or if not, (ii) the period immediately preceding the test of the Hydro Metering Equipment equal to one-half the time period from the date of the last test of the Hydro Metering Equipment provided that the period covered by the correction shall not exceed six months. Hydro shall provide copies of its metering tests to the Limited Partnership, which shall provide the information to TPC at least biannually.

4.6 Alternate Metering Equipment.

Hydro may on notice to the Limited Partnership advise that it shall not install its own metering equipment in accordance with the provisions of Sections 4.3, 4.4 and 4.5) and shall for the purposes of Sections 4.1 and 4.2, have the quantum of energy determined by the metering equipment installed, operated, maintained, owned and/or controlled by Hydro (Transmission and Development Business Unit) pursuant to the provisions of the Interconnection and Operating Agreement. The Parties agree that in the event Hydro provides this notice that the metering data provided to the Limited Partnership pursuant to the provisions of the Interconnection and Operating Agreement shall be used for the purposes of determining the quantum of energy delivered to the Point of Interconnection.

4.7 IOA Inspections and Testing

The Parties also agree to be bound by the inspection and testing provisions of the Interconnection and Operating Agreement and to any adjustments or corrections that are made in accordance with the provisions of that agreement to the metering measurements and data and Hydro shall be entitled to receive all metering data and records that the Limited Partnership receives pursuant to the provisions of the Interconnection and Operating Agreement. Hydro shall also be entitled to

attend with the Limited Partnership at all testing of the metering equipment under the provisions of the Interconnection and Operating Agreement. The Limited Partnership agrees to cause the metering equipment to be inspected or tested in accordance with the provisions of the Interconnection and Operating Agreement if Hydro so requests. Hydro shall retain its right on reasonable notice to the Limited Partnership to install the Hydro Metering Equipment in accordance with Sections 4.3, 4.4 and 4.5 at a subsequent date and to have those provisions apply for the determination of the quantum of energy delivered to the Point of Interconnection.

ARTICLE V ENERGY RATE ADJUSTMENTS

5.1 Report on Long-Term Transactions and Opportunity Transactions.

Hydro shall provide the Limited Partnership within thirty (30) days of the last day of each Hydro Financial Year with a written report of the amount of energy (expressed in GWh) that was bought or sold pursuant to the Long-Term Transactions that were used to calculate the Long-Term Transaction Rate for that Hydro Financial Year and the amount of energy (expressed in GWh) that was bought or sold pursuant to the Opportunity Transactions that were used to calculate the Opportunity Transaction Rate for that Hydro Financial Year. Such report shall also include particulars of the Adjustments made by Hydro pursuant to Section 2.4

5.2 Insufficient Transaction in Respect of Long-Term Transaction Rate.

If the report prepared by Hydro pursuant to Section 5.1 in respect of a particular Hydro Financial Year discloses there were Insufficient Transactions in respect of the Long-Term Transaction Rate for that Hydro Financial Year, then, subject to an Energy Rate Review brought pursuant to Article XVII of the PDA the compensation to be paid by Hydro for the On-Peak Energy received by Hydro at the Point of Interconnection on a Canadian Dollar per MWh basis during that Hydro Financial Year (the “**Insufficient Long-Term Transaction Year**”) shall be based on a rate that is equal to the actual weighted average price over the Insufficient Long-Term Transaction Year that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid, for the energy and capacity purchased or sold by Hydro pursuant to all applicable On-Peak Opportunity Transactions during the Insufficient Long-Term Transaction Year (the “**On-Peak Opportunity Transaction Rate**”) determined in the following manner:

- (a) only those On-Peak Opportunity Transactions or portions thereof applicable to the time period where the energy sold or purchased physically crossed the Manitoba border and were delivered during the Insufficient Long-Term Transaction Year, as determined by Hydro in accordance with Good Utility Practice, (the “**Applicable On-Peak Opportunity Transactions**”) shall be included in determining the actual weighted average price over the Insufficient Long-Term Transaction Year;
- (b) Hydro, acting reasonably, in addition to all other allocations or adjustments that may be required, shall include the portion of the price, if any, that is payable for capacity, which is attributable to that portion of the energy that physically crossed the Manitoba border and was delivered during the Insufficient Long-Term Transaction Year for each of the Applicable On-Peak Opportunity Transactions in determining the actual average weighted price over the Insufficient Long-Term Transaction Year;
- (c) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable On-Peak Opportunity Transactions shall be adjusted to reflect the price at the Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable On-Peak Opportunity Transactions. The charges or credits will include actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but shall not include Hydro’s administrative and general overhead costs and expenses or any costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement;
- (d) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable On-Peak Opportunity Transactions shall be determined in Canadian Dollars per MWh and if Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid in U.S. Dollars pursuant to any of the Applicable On-Peak Opportunity Transactions, the amounts shall be converted to Canadian Dollars (after the Adjustments referred to in Section 2.4) by reference to the average Equivalent Canadian Dollar Amount for the month,

during which the said obligation to pay, or the entitlement to be paid the said amount arises; and

- (e) the On-Peak Opportunity Transaction Rate shall be expressed in Canadian dollars per MWh and shall be calculated by dividing (i) the total net amount that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, pursuant to the Applicable On-Peak Opportunity Transactions, determined in accordance with this Section 5.2; by (ii) the total energy that was imported or exported by Hydro pursuant to the Applicable On-Peak Opportunity Transactions, determined in accordance with this Section 5.2.

If as a result of an Energy Rate Review pursuant to Article XVII of the PDA, the compensation to be paid by Hydro for the On-Peak Energy received by Hydro during the Insufficient Long-Term Transaction Year is greater than or less than the compensation determined in accordance with this Section 5.2, then Hydro shall prepare a reconciliation of the amount owing to the Limited Partnership by Hydro or that Hydro has overpaid. The reconciliation shall adjust for all amounts that the Limited Partnership is required to pay to Hydro, that is based on or is otherwise determined from the Energy Calculation paid by Hydro to the Limited Partnership for the delivery of the Net Actual Generation, including the fee to be paid pursuant to Section 3.1(j). On completion of the reconciliation any amount overpaid by Hydro, shall immediately be paid by the Limited Partnership to Hydro, without interest, unless Hydro agrees in writing to receive same as a credit on account of any amount otherwise required to be paid pursuant to the provisions of this Agreement and any additional amount owing by Hydro shall immediately be paid by Hydro to the Limited Partnership without interest.

5.3 Insufficient Transactions in Respect of the Opportunity Transaction Rate.

If the report prepared by Hydro pursuant to Section 5.1 in respect of a particular Hydro Financial Year discloses there were Insufficient Transactions in respect of the Opportunity Transaction Rate for that Hydro Financial Year, then, the compensation to be paid by Hydro for the Off-Peak Energy received by Hydro during that Hydro Financial Year and for all subsequent years shall, subject to any future Energy Rate Review, be determined pursuant to the Energy Rate Review, brought pursuant to Article XVII of the PDA.

5.4 Adjustment of Energy Rate.

The Energy Rate payable under this Agreement shall be adjusted to accord with the agreement of the Parties or the decision of an Expert made pursuant to an Energy Rate Review and Transaction Rate Review. Forthwith after any agreement or decision which has retroactive effect, Hydro shall prepare a reconciliation of the amount that is owing to the Limited Partnership by Hydro or the amount that Hydro has overpaid. The reconciliation shall adjust for all amounts that the Limited partnership is required to pay to Hydro, that is based on or is otherwise determined from the Energy Calculation paid by Hydro to the Limited Partnership adjust for all amounts that the Limited partnership is required to pay to Hydro, that is based on or is otherwise determined from the Energy Calculation paid by Hydro to the Limited Partnership for the delivery of the Net Actual Generation, including the fee required to be paid pursuant to Section 3.1(j). On completion of the reconciliation any amount overpaid by Hydro, shall immediately be paid by the Limited Partnership to Hydro, without interest, unless Hydro agrees in writing to receive same as a credit on account of any amount otherwise required to be paid to the Limited Partnership pursuant to the provisions of this Agreement and any additional amount owing by Hydro shall immediately be paid by Hydro to the Limited Partnership without interest.

ARTICLE VI

ENERGY RATE REVIEWS AND TRANSACTION RATE REVIEWS

6.1 Energy Rate Review.

The Long-Term Transaction Rate and the Opportunity Transaction Rate used to determine the Energy Rate have been agreed to as a proxy or reasonable substitute to capture the enhanced value of the energy and capacity to Hydro in the electricity markets available to Hydro outside of Manitoba and the recovery of associated costs related to the purchase of the energy and capacity from the Limited Partnership and the resale in the electricity markets available to Hydro outside of Manitoba. The Energy Rate has been arrived at based on industry practices existing as at the date of this Agreement for the pricing of different types of transactions for different classes or categories of energy. Industry practices may change during the Term, possibly significantly. For this reason, the Pricing Principles and Pricing Criteria described in Sections 6.2 and 6.3 have been established to apply to any Energy Rate Review. Subject to Sections 6.2 and 6.3, the

Energy Rate may be reviewed from time to time in the manner provided in Article XVII of the PDA.

6.2 Pricing Principles.

The rate Hydro is to pay for the capacity, of and the energy generated by, the Wuskwatim Project will be based on the value of the energy and capacity to Hydro at the Manitoba border in the electricity markets available to Hydro outside of Manitoba. During the ten year period from 2014/15 to 2023/24, the Domestic Transaction Rate will form a portion of the rate Hydro will pay the Limited Partnership. In the years after the NCN Total Outstandings and TPC Total Outstandings are repaid in full, the Fee will be implemented in place of all fees that would have been payable under the terms of the Initial PPA had it remained in effect. These principles shall be collectively known as “the **Pricing Principles**” for purposes of any Rate Review.

6.3 Pricing Criteria.

During an Energy Rate Review the following pricing criteria (the “**Pricing Criteria**”) shall be applicable:

- (a) the rate will recognize: (i) the effects of applicable constraints and regulations that may limit access to the electricity markets outside of Manitoba; and (ii) any other risks or actual costs to Hydro, associated with or applicable to the purchase of the energy and capacity of the Wuskwatim Project from the Limited Partnership and the resale of that energy and capacity in electricity markets outside of Manitoba (to the extent Hydro has not been compensated for these risks or costs pursuant to other provisions of this Agreement);
- (b) in determining the value of the energy and capacity of the Wuskwatim Project the rate will recognize that the Wuskwatim Project is operated by Hydro as part of the Integrated Power System and although Hydro, as purchaser, accepts the energy from the Wuskwatim Project as it is produced on an hourly basis, Hydro through its operation of the Integrated Power System is able to allocate portions of the energy into other time periods;

- (c) if Hydro is exporting or importing energy to or from electricity markets outside of Manitoba in reasonable quantities (the determination of which is not restricted by the quantum referenced for Insufficient Transactions), the price that Hydro obtained at the Manitoba border for the export or import of the energy that physically crossed the Manitoba border pursuant to the export or import transactions net of all Adjustments ; and
- (d) if Hydro is not exporting or importing energy and capacity in reasonable quantities (the determination of which is not restricted by the quantum referenced for Insufficient Transactions), then, subject to Section 6.3(a)(ii), the determination of value to Hydro will be made based on the price that Hydro could have obtained at the Manitoba border if it was exporting energy and capacity to electricity markets available to Hydro outside of Manitoba net of all Adjustments.

6.4 Transaction Rate Review.

The Adjustments made by Hydro may be reviewed in the manner provided in Article XVII of the PDA.

**ARTICLE VII
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of the Limited Partnership.

The Limited Partnership represents and warrants that each of the following representations and warranties is true and accurate:

- (a) the Limited Partnership is a limited partnership duly formed, validly existing and in good standing under the laws of the Province of Manitoba and has all requisite power and authority to own, operate or lease the properties owned or to be owned, operated or leased by the Limited Partnership and to carry on its business as contemplated by the Limited Partnership Agreement; and
- (b) this Agreement has been duly authorized, executed and delivered by the General Partner by or 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 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 Agreement, at the discretion of the Arbitrator.

7.2 Survival of Representations and Warranties of the Limited Partnership.

All the representations and warranties of the Limited Partnership in Section 7.1 shall survive the execution and delivery of this Agreement and shall continue in full force and effect notwithstanding any investigation made at any time by or on behalf of Hydro.

7.3 No Representations by the Limited Partnership.

No other representation, warranty or other statement made by the Limited Partnership in respect of this Agreement shall be binding on the Limited Partnership unless made by it in writing as a specific amendment to this Agreement.

7.4 Representations and Warranties of Hydro.

Hydro represents and warrants that each of the following representations and warranties is true and accurate:

- (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 and to enter into this Agreement and to perform its obligations hereunder, subject to the provisions of the *Hydro Act*; and
- (b) this Agreement has been duly authorized, executed and delivered by Hydro and is a legal, valid and binding obligation of Hydro enforceable against Hydro by the Limited Partnership in accordance with its terms, except as enforcement may be limited by the provisions of the *Hydro Act* and by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies

may be granted only in the discretion of a court of competent jurisdiction or, by this Agreement, at the discretion of the Arbitrator.

7.5 Survival Representations and Warranties of Hydro.

All the representations and warranties of Hydro contained in Section 7.4 shall survive the execution of this Agreement and shall remain in full force and effect notwithstanding any investigation made at any time by or on behalf of the Limited Partnership.

7.6 No Representations by Hydro.

No other representation, warranty or other statement made by Hydro in respect of this Agreement shall be binding on Hydro unless made by it in writing as a specific amendment to this Agreement.

ARTICLE VIII

BILLING, PAYMENTS AND ADJUSTMENTS

8.1 Billings, Payments and Adjustments

(1) All billings shall be calculated monthly at the end of each calendar month and reconciled monthly and yearly in accordance with provisions of this Agreement.

(2) The Limited Partnership shall deliver all bills to Hydro monthly within twenty-one (21) calendar days after the end of the period covered by the bill. The period for billing shall be from 12:01 a.m. (Winnipeg time) of the first calendar day of the month to 12:01 a.m. (Winnipeg time) of the first calendar day of the succeeding month. Bills shall be considered rendered upon receipt by Hydro. If all information necessary is not accurately known in time for the preparation of the monthly bill, estimates may be used to prepare an interim bill with a final bill to be prepared when accurate information becomes known.

(3) All bills shall be due and payable in immediately available same-day funds within five (5) Business Days from the date the bill is rendered. If such due date falls on a non-Business Day, the payment shall be due and payable on the next following Business Day. Payments received after the due date shall be considered late. Late payments shall include a fee equal to

the amount determined by applying interest at the prime rate established by the Limited Partnership's bank plus two percent (2%) per annum to the overdue amount billed for the period the payment is late.

(4) If a Party disputes all or any part of a bill, that Party shall pay the amount of the bill not in dispute to the other Party and shall pay into an account specified by Hydro that portion of the bill in dispute, pending resolution of such dispute. If the resolution of a dispute regarding a bill results in a refund, interest thereon shall accrue at whatever rate of interest is applicable to the account into which the disputed amount has been deposited.

(5) Payment of all bills shall be made by interbank wire transfer to the Limited Partnership bank in accordance with the account instructions as provided by the Limited Partnership and payment shall be deemed made when received by the designated bank.

(6) Hydro shall bill the Limited Partnership for all actual costs and expenses which it incurs in connection with this Agreement. The Limited Partnership's payment to Hydro under this paragraph shall be made within five (5) Business days following receipt of the written bill from Hydro. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate of the Limited Partnership's bank's prime interest rate plus two percent (2%) per annum.

(7) Hydro shall have the right to set-off and/or recoup against payments to be made to the Limited Partnership by the terms of this Agreement any amount reasonably believed by Hydro to be due to Hydro from the Limited Partnership under Section 3.1(j) and under Section 9.3(b). Hydro's exercise of its right of retention under this section is without prejudice to the Limited Partnership's right to contest the set-off and the claim upon which the set-off is based. Where Hydro exercises its right of set-off or recoupment, Hydro shall notify the Limited Partnership in writing of the specific basis for the set-off or recoupment in reasonable detail, including the basis for calculation of the amount believed to be due to Hydro.

ARTICLE IX

SPILL ENERGY REVENUE ADJUSTMENT

9.1 Article IX Definitions.

For purposes of this Article IX, defined terms shall have the following meanings:

“**Average On-Peak Energy Price**” means the average Energy Rate paid by Hydro to the Limited Partnership for On-Peak Energy, calculated on an annual basis, pursuant to this Agreement for a particular Hydro Financial Year less:

- (a) Transmission Costs;
- (b) the Fee, if applicable; and
- (c) Water Rental Charges.

“**Average Off-Peak Energy Price**” means the average Energy Rate paid by Hydro to the Limited Partnership for Off-Peak Energy, calculated on an annual basis, pursuant to this Agreement for a particular Hydro Financial Year less:

- (a) Transmission Costs;
- (b) the Fee, if applicable; and
- (c) Water Rental Charges.

“**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 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);

“**CRD Wuskwatim Spill Energy**” means the total energy in GWh that could have been generated at the Wuskwatim Generating Station within each Hydro Financial Year as On-Peak

Spill Energy and as Off-Peak Spill Energy, respectively, had excess water not been spilled at Missi Falls calculated in accordance with Section 9.2.

“**Fee**” means the fees payable by the Limited Partnership to Hydro under Section 3.1(j) of this Agreement.

“**Missi Falls**” means the Missi Falls Control Station operated by Hydro.

“**Missi Falls Minimum Flow**” means the minimum discharge requirement as specified in the licences issued to Hydro for Missi Falls under the CRD Licence or other licence, permit or regulatory provisions applicable to the operation of Missi Falls from time to time.

“**Notigi**” means the Notigi Control Station operated by Hydro.

“**Notigi Maximum Flow**” means the maximum discharge requirement as specified in the licences issued to Hydro for Notigi under the CRD Licence or other licence, permit or regulatory provisions applicable to the operation of Notigi from time to time.

“**Off-Peak Spill Energy**” means that portion of CRD Wuskwatim Spill Energy, measured in MWh, that would have been generated as Off-Peak Energy minus 1.73 GWh or such other amount of energy to be deducted as determined in a Rate Review.

“**On-Peak Spill Energy**” means that portion of CRD Wuskwatim Spill Energy, measured in MWh, that would have been generated as On-Peak Energy minus 0.87 GWh or such other amount of energy to be deducted as determined in a Rate Review.

“**Spill Energy Revenue Adjustment**” means the amount calculated pursuant to Section 9.3.

“**SPLASH Modelling**” means the results Hydro generated as at the Hydro Financial Year ending on March 31, 2005 under its computer model (Simulation Program for Long-term Analysis of System Hydraulics) to simulate the operation of the Integrated Power System under a series of flow conditions with the objective of meeting a forecast of load requirements and maximizing revenues while recognizing limitations imposed by licences and agreements.

“**Transmission Costs**” means costs related to the transmission of Net Actual Generation received by Hydro at the Point of Interconnection on the Hydro Transmission System.

“**Water Rental Charges**” means the Water Rental charges payable to the Province of Manitoba, under *The Water Power Act* (Manitoba), for use of water for the Wuskwatim Project.

“**Wuskwatim GS Spill**” means a spill or release of water at the Wuskwatim Project as a result of operating conditions.

9.2 CRD Wuskwatim Spill Energy Calculation.

The CRD Wuskwatim Spill Energy shall be the sum of the On-Peak Spill Energy and the Off-Peak Spill Energy and shall be determined:

- (a) based on an amount of water flow equal to the lesser of:
 - (i) Missi Falls flow in excess of the Missi Falls Minimum Flow; if the value is less than zero, the value shall equal zero;
 - (ii) Notigi Maximum Flow in effect at the time minus the actual Notigi flow, if the value is less than zero, the value shall equal zero;
 - (iii) zero during any period during which a Wuskwatim GS Spill occurs; and
 - (iv) zero during any period in which Hydro is unable to accept energy generated at the Wuskwatim Generating Station due to domestic transmission constraints per Section 2.18 of this Agreement;

- (b) with allowance for:
 - (i) Missi Falls flow in excess of the Missi Falls Minimum Flow considered necessary by Hydro, acting in accordance with Good Utility Practice, to manage wind effects, ice formation, emergency conditions, control structure manual operability constraints, or other relevant factors; and
 - (ii) Notigi flow below Notigi Maximum Flow considered necessary by Hydro, acting in accordance with Good Utility Practice, to manage wind effects, operation to manage ice formation, emergency

conditions, control structure manual operability constraints, all other relevant factors;

- (c) provided that if Wuskwatim generation units are out of service or derated, the calculation of CRD Wuskwatim Spill Energy shall be reduced by the amount of energy that potentially could have been generated if generation units were not out of service or derated.

9.3 Revenue Adjustment Calculation.

Within one hundred twenty (120) days of the end of each Hydro Financial Year, commencing in the Hydro Financial Year ending March 31, 2015, Hydro shall provide the Limited Partnership and the Limited Partners with a calculation of the CRD Wuskwatim Spill Energy and the following information:

- (a) the CRD Wuskwatim Spill Energy for the immediately preceding Hydro Financial Year;
- (b) the particulars of the calculation of the CRD Wuskwatim Spill Energy, the Average On-Peak Energy Price, the Average Off-Peak Energy Price, the On-Peak Spill Energy Amount, if any, and the Off-Peak Spill Energy Amount, if any, for that Hydro Fiscal Year; and
- (c) the data and methodologies which formed the basis of the calculations, in reasonable detail so each Limited Partner can verify the calculations.

9.4 Payment of Revenue Adjustment.

Within thirty (30) days of providing the information in Section 9.3:

- (a) if the CRD Wuskwatim Spill Energy is a number greater than zero, Hydro shall pay to the Limited Partnership an amount equal to the sum of:
 - (i) the product of the On-Peak Spill Energy and the Average On-Peak Energy Price; and

- (ii) the product of the Off-Peak Spill Energy and the Average Off-Peak Energy Price.
- (b) if the CRD Wuskwatim Spill Energy is a number less than zero, the Limited Partnership shall pay to Hydro an amount equal to the sum of:
- (i) the product of the On-Peak Spill Energy Amount, negative one (-1.0), and the Average On-Peak Energy Price; and
 - (ii) the product of the Off-Peak Spill Energy, negative one (-1.0), and the Average Off-Peak Energy Price.

Hydro may set-off any amount payable by the Limited Partnership pursuant to Section 9.4 against any amounts Hydro is obligated to pay the Limited Partnership pursuant to this Agreement.

9.5 Spill Energy Amount and Revenue Adjustment Review.

The Parties agree that the CRD Wuskwatim Spill Energy and the data and methodologies which formed the basis of the calculations used in determining the Spill Energy Revenue Adjustment may be reviewed from time to time in the manner provided for in Article XVII of the PDA. The Parties agree that the principles to be considered in a Rate Review of the CRD Wuskwatim Spill Energy and the Spill Energy Revenue Adjustment are that:

- (a) the Parties intend the Limited Partnership receives or pays an annual adjustment that would make the annual total revenue of the Limited Partnership equal to that which it would have received if the CRD Wuskwatim Spill Energy equaled the average amount of spill energy predicted by the SPLASH Modelling for Hydro's Financial Year ending March 31, 2005; and
- (b) the Fee and the Water Rental Charges in effect at the date of each adjustment shall be subtracted from the amount of the adjustment.

ARTICLE X
EVENTS OF DEFAULT

10.1 **Event of Limited Partnership Default**

If any of the following events, conditions or circumstances (each an “**Event of Limited Partnership Default**”) shall occur and be continuing, then Hydro by written notice to the Limited Partnership shall be entitled to terminate the obligations of Hydro under this Agreement:

- (1) any representation or warranty or certification made or deemed to be made by the Limited Partnership pursuant to or in connection with this Agreement delivered to Hydro shall prove to have been incorrect in any material respect when made or deemed to have been made;

- (2) an Arbitrator makes a determination that the Limited Partnership failed to perform or observe any term, covenant or agreement contained in this Agreement, on its part to be performed or observed and such failure shall remain unremedied after the end of the period within which the Arbitrator determines the Limited Partnership is required to remedy such failure;

- (3) (the Limited Partnership shall:
 - (a) become insolvent or generally not pay its debts as such debts become due;
 - (b) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors;
 - (c) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
 - (d) institute or have instituted against it any proceeding seeking:
 - (i) to adjudicate it a bankrupt or insolvent;

- (ii) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
 - (iii) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of the Limited Partnership's Property;
 - (iv) and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within 30 days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of the Limited Partnership's Property) shall occur; or
 - (v) take any action to authorize any of the foregoing actions;
- (4) Notice is sent to or received by the Limited Partnership from any creditor with respect to the intention of such creditor to enforce a lien on any Property of the Limited Partnership unless such Notice is being contested in good faith by appropriate legal proceedings and such Notice has not resulted in, or does not involve, any immediate danger of the sale, forfeiture or loss of any of the Property of the Limited Partnership that is the subject of such Notice;
- (5) any one or more judgments or orders in excess of \$75,000 (or the equivalent in another currency) in the aggregate, or any one or more orders, directives, letters of credit or other communications from any Governmental Authority which may be reasonably likely to require the Limited Partnership to expend an amount in excess of \$75,000 (or the equivalent amount in another currency) in the aggregate shall be rendered against the Limited Partnership, and either:

- (a) enforcement proceedings shall have been commenced by any creditor upon any such judgment(s) or order(s); or
- (b) there shall be any period of ten (10) consecutive Business Days during which a stay of enforcement of any such judgment or order, directive, letter or other communication by reason of a pending appeal or otherwise, shall not be in effect;
- (6) the loss, suspension or failure to renew any Licence or any other licence or permit held by the Limited Partnership or any agreement to which the Limited Partnership is a party the effect of which would prohibit or otherwise restrict the Limited Partnership from conducting all or a material part of the Business; or
- (7) the occurrence of a Material Adverse Business Effect.

10.2 Expense of Hydro

Upon the occurrence of any Event of Limited Partnership Default, which has not been waived and is continuing, Hydro may take any action Hydro considers advisable, acting reasonably, to remedy the effect of such Event of Limited Partnership Default. All reasonable expenses and costs, charges incurred by or on behalf of Hydro in connection with any remedial action taken pursuant to this Section 10.2 shall be a cost to be paid to Hydro by the Limited Partnership in accordance with provisions of this Agreement.

10.3 Event of Hydro Default

If any of the following events, conditions or circumstances (each an “**Event of Hydro Default**”) shall occur and be continuing then the Limited Partnership by written notice to Hydro shall be entitled to terminate the obligations of the Limited Partnership under this Agreement:

- (1) an Arbitrator makes a determination that Hydro failed to perform or observe any term, covenant or agreement contained in this Agreement on its part to be performed or observed and such failure shall remain

unremedied after the end of the period within which the Arbitrator determines Hydro is required to remedy such failure; or

- (2) Hydro shall:
- (a) become insolvent or generally not pay its debts as such debts become due;
 - (b) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors;
 - (c) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
 - (d) institute or have instituted against it any proceeding seeking:
 - (i) to adjudicate it a bankrupt or insolvent;
 - (ii) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors; or
 - (iii) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of its Property;
 - (iv) and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within 30 days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property) shall occur; or
 - (v) take any corporate action to authorize any of the foregoing actions;

then, in any such event, the Limited Partnership shall by written notice to Hydro be entitled to terminate the obligations of the Limited Partnership under this Agreement.

10.4 **Expense of the Limited Partnership**

Upon the occurrence of any Event of Hydro Default, which has not been waived and is continuing, the Limited Partnership may take any action the Limited Partnership considers advisable, acting reasonably, to remedy the effect of such Event of Hydro Default. All reasonable expenses and costs, charges incurred by or on behalf of the Limited Partnership in connection with any remedial action taken pursuant to this Section 9.4 shall be a cost to be paid to the Limited Partnership by Hydro in accordance with provisions of this Agreement.

10.5 **Remedies Cumulative**

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

ARTICLE XI
DISPUTE RESOLUTION

11.1 **General.**

Subject to Section 11.2, all disputes, differences or claims, or apprehended disputes or claims which arise under this Agreement relating to the application, interpretation, meaning, alleged violation, performance or non-performance of this Agreement shall be settled by final and binding arbitration conducted pursuant to the provisions of this Article XI.

11.2 **Limitation.**

The provisions of this Article XI do not apply to a Rate Review which reviews shall be conducted pursuant to the provisions of Article XVII of the PDA. Notwithstanding the provisions of this Article XI an Arbitrator appointed pursuant to this Article XI shall have no jurisdiction to consider or review any matters referred to or referable to an Expert under Article XVII of the PDA, except with respect to the enforcement of a decision of such Expert made in accordance with the provisions of Article XVII of the PDA.

11.3 Endeavour to Resolve.

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

11.4 Arbitration.

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

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

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

11.5 Reply.

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

11.6 Referral to Arbitration.

Within 30 days of the Applicant’s receipt of the Reply, if the Dispute has not been settled, the Dispute shall be referred to binding arbitration pursuant to the provisions of *The Arbitration Act* (Manitoba) and the following sections of this Article XI, provided that if there is any inconsistency between the provisions of the said Act and Section 11, this Agreement shall apply.

11.7 Appointment of Arbitrator.

Subject to Section 11.8, an Arbitrator shall be appointed to adjudicate the dispute, using the following procedure:

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

11.8 Qualifications of Arbitrator.

An Arbitrator appointed pursuant to Section 11.7 shall:

- (a) be qualified to decide the particular question in dispute;
- (b) not have a pecuniary interest in the particular matter in dispute; and
- (c) not have, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to Section 11.4, acted, or been a member of any firm that has acted as solicitor, counsel or agent for any of the Parties.

11.9 Length of Hearing.

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

11.10 Place of Hearing.

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.

11.11 Powers of the Arbitrator.

The Arbitrator may determine all questions of law, fact and jurisdiction and all matters of procedure relating to the arbitration. The Arbitrator shall have the right to grant all legal and equitable relief necessary to provide a final and conclusive resolution of the Dispute including, without limitation, the right to relieve, on just and equitable terms, if applicable, against breaches of time limits set out in this Agreement, the right to determine, if applicable, the monetary value of any loss or injury suffered by a Party 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 otherwise expressly agree, the Arbitrator shall not have the authority or jurisdiction to change, alter, or amend this Agreement or any term or provision contained therein.

11.12 Counsel.

The Parties may be represented by counsel.

11.13 Evidence.

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

11.14 Arbitration Award.

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

11.15 Award Final.

The decision of the Arbitrator shall be final and binding on the Parties. 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).

11.16 Costs of Arbitration.

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

11.17 Performance of Obligations.

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

11.18 Confidentiality.

All hearings before the Arbitrator shall be closed to the public. All statements and evidence submitted for the arbitration, the decision of the Arbitrator, the fact of the arbitration itself and all other aspects regarding the arbitration shall be kept strictly confidential except as otherwise required by applicable Law or agreed to by the Parties.

11.19 Arbitrator's Undertaking.

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

11.20 Vacancy.

Where a vacancy occurs in the office of the Arbitrator after the commencement of proceedings, the proceedings need not recommence but may, with the unanimous consent of the Parties

continue before a replacement Arbitrator. In the absence of such unanimous consent, the arbitration must recommence as if it were a new matter before a new Arbitrator.

11.21 **Days.**

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

ARTICLE XII
GENERAL PROVISIONS

12.1 **Notices.**

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

12.2 **Indemnification.**

The Limited Partnership agrees to indemnify and save harmless Hydro and its officers, directors, representatives and employees and agents from any and all claims, demands, proceedings, law suits, damages, liabilities, deficiencies, costs and expenses (including, without limitation all legal fees on a solicitor and client basis) and other professional fees and disbursements, interests, penalties and amounts paid in settlement suffered or incurred by Hydro as a result of or arising directly or indirectly out of or in contravention of any breach by the Limited Partnership of or in

any inaccuracy of any representation or warranty of the Limited Partnership contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto and any breach or non-performance by the Limited Partnership of any covenant to be performed by or pursuant to this Agreement or in any agreement, certificate or other document delivered pursuant hereto.

12.3 Further Assurances.

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

12.4 Time of the Essence.

Time shall be of the essence of this Agreement.

12.5 Enurement.

This Agreement shall enure to the benefit of and be binding upon the Parties and their permitted assigns.

12.6 Counterparts.

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

12.7 Waivers and Amendments.

Any term, covenant or condition of this Agreement may be amended only with the written consent of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

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

Per: _____
Name:
Title:

**THE MANITOBA HYDRO-ELECTRIC
BOARD**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE A

ARBITRATOR'S UNDERTAKING

FORM OF OATH OR UNDERTAKING OF THE ARBITRATOR

I, _____, do swear and affirm that I will hear the matters referred to me as provided for by the Power Purchase Agreement and The Arbitration Act (Manitoba) in the matter of:

(State particulars of the matter)

and make a true and impartial award, according to the evidence, arguments of the parties, using my skill and knowledge.

DATED this _____ day of _____, 20__.

Sworn or Affirmed before

A Commission, Notary, etc.

at _____

this ___ day of _____, 20__.

SCHEDULE B

NOTICES

Wuskwatim Power Limited Partnership
c/o 5022649 Manitoba Ltd.
360 Portage Avenue
P.O. 815, Station Main
Winnipeg, MB R3C 2P4
Attention: Chairman

Fax: (204) 360-6138

Manitoba Hydro
360 Portage Avenue
P.O. 815, Station Main
Winnipeg, MB R3C 2P4
Attention: Ken Tennenhouse, General Counsel

Fax: (204) 360-6147

SCHEDULE 6.1
AMENDED AND RESTATED NCN FINANCING AGREEMENT

**AMENDED AND RESTATED NCN FINANCING
AGREEMENT**

between

NISICHAWAYASIIHK CREE NATION

– and –

TASKINIGAHP POWER CORPORATION

– and –

THE MANITOBA HYDRO-ELECTRIC BOARD

Effective April 1, 2014

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NCN FINANCING AGREEMENT

Effective April 1, 2014

B E T W E E N:

NISICHAWAYASIIHK CREE NATION,
(hereinafter referred to as “NCN”)

- and -

TASKINIGAHP POWER CORPORATION,
(hereinafter referred to as “TPC”)

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,
(hereinafter referred to as “Hydro”)

The parties agree as follows:

ARTICLE I INTERPRETATION

1.1 Defined Terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bond used in the calculation of the said Canadian Ten Year Spread.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

date at which Debt is to be determined (excluding trade payables incurred in the ordinary course of business).

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

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

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

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

“**Dividend Credit Facility Commitment**” means,

- (a) for the calendar year 2015 eighteen million (\$18,000,000) dollars, less the sum of NCN Cash Flows From All Sources for the calendar years 2014 and 2015;
- (b) in all other years, the aggregate of the amount calculated on each Anniversary Date prior to, but not including, the Maturity Date derived from the formula “ $(A \times B) - C$ ”, where A is the Canadian Ten Year Rate on that Anniversary Date less 2.5%; B is TPC’s Own Invested Cash on that Anniversary Date; and C is the aggregate amount of all Distributions from the Limited Partnership on TPC’s Dividend Cash Units actually paid out to TPC (and not paid to Hydro pursuant to the irrevocable assignment and direction under the Loan Documents) in the 12-month period ending on such Anniversary Date. (For greater certainty, any Distributions on TPC’s Dividend Cash Units which TPC was entitled to receive from the Limited Partnership pursuant to the provisions of the Limited

Partnership Agreement but which were paid to Hydro pursuant to the provisions of the Loan Documents or pursuant to the provisions of the TPC Financing Agreement are not, for the purposes of the determination of the Dividend Credit Facility Commitment and any availability thereunder only, included as Distributions on TPC's Dividend Cash Units received by TPC.)

"Dividend Credit Facility Commitment Cap" means the amount calculated as at the first Anniversary Date equal to four times (A) where, (A) is TPC's Own Invested Cash on the first Anniversary Date.

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

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

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

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

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

"Future Material Agreements" has the meaning specified in Section 6.1(12).

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

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

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

“**Governmental Entity**” means any:

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

“**Guarantee**” means an unconditional, irrevocable, continuing guarantee executed by TPC in favour of Hydro of the payment and performance by NCN of all of the Obligations on terms and conditions acceptable to Hydro, acting reasonably, and consistent with the terms of this Agreement, which Guarantee shall be delivered by TPC to Hydro at Initial Closing.

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

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

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

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

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

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

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

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

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

“**Limited Partnership**” means the Wuskwatim Power Limited Partnership created pursuant to the Initial Limited Partnership Agreement, and continued pursuant to 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 third Amended and Restated Limited Partnership Agreement amending and restating the second Limited Partnership Agreement, dated April 16, 2015 between the general partner in its capacity as General Partner and Hydro and TPC, in their respective capacities as limited partners.

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

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

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

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

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

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

“**Material Agreements**” has the meaning specified in Section 5.1(k)(iii).

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

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

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

“**NCN Cash Flow From All Sources**” means, for the calendar years 2014 and 2015, the total amount of:

- (a) the water rental rebate which NCN received or is entitled to receive from Manitoba for the calendar year pursuant to its water rental rebate agreement with Manitoba;
- (b) the interest income on the Hydro Bonds paid or payable to in that calendar year by Hydro in accordance with the One Year Agreement or PDA Supplement No. 2;
- (c) three hundred eight thousand twenty-five (\$308,025) dollars paid by Hydro to NCN on March 3, 2014 as the remaining NCN Dividend Credit advance for the year 2013; and
- (d) the annuity payable by Hydro to NCN for the calendar year pursuant to Article 11 of the PDA Supplement No. 2.

“**NCN Deed of Assignment**” has the meaning ascribed thereto in the PDA.

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

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

“**One Year Agreement**” means the agreement dated November 28, 2013 between NCN and Hydro.

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

“**PDA**” means the Project Development Agreement dated June 26, 2006 made between NCN, Hydro, TPC, the General Partner and the Limited Partnership as supplemented and amended by the PDA Supplement No. 1 dated March 15, 2011 and the PDA Supplement No. 2.

“**PDA Supplement No. 2**” means the second supplementary agreement dated April 16, 2015 between NCN, Hydro, Taskinigahp Power Corporation, 5022649 Manitoba Ltd. and Wuskwatim Power Limited Partnership.

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

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

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

involve any immediate danger of the sale, forfeiture or loss of such Property;

- (v) any Lien, payment of which has been provided for by the depositing with Hydro of an amount in cash, or the obtaining of a surety bond satisfactory to Hydro, in its absolute discretion, sufficient in either case to pay or discharge such Lien and which deposit or bond Hydro is authorized to use or draw upon for that purpose;
- (vi) Liens securing Purchase Money Debt; provided that: (i) such Liens shall extend only to the specific Property of TPC acquired with the proceeds of such Purchase Money Debt (and not any other portion of the Collateral); and (ii) recourse in respect of such Liens shall be limited to such specific Property;
- (vii) the Hydro Liens; or
- (viii) any other Lien approved in writing in advance by Hydro in its unfettered discretion.

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

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

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

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

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

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

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

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

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

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

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

“**TPC Financing Agreement**” means the Amended and Restated TPC Financing Agreement dated April 16, 2015 between TPC and Hydro.

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

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

- (i) on the Final Investment Date, that the number of TPC’s Units equal to (A) divided by (B) where (A) equals the number of TPC’s Units on the Final Investment Date multiplied by TPC’s Own Invested Cash as of that date; and (B) equals the sum of: (i) the aggregate amount of Equity Credit Advances which remain outstanding on that date; and (ii) TPC’s Invested Cash as of that date;
- (ii) on any particular day after the Final Investment Date (the “**Measurement Date**”) until the date that the Equity Credit Facility (as defined in the TPC Financing Agreement) has been paid out in full, that number of TPC’s Units equal to (A) divided by (B) where (A) is a product of: (i) the number of TPC’s Dividend Cash Units on the Final Investment Date; multiplied by (ii) the number of TPC’s Units on the Measurement Date; and (B) equals the number of TPC’s Units on the Final Investment Date; and
- (iii) on the date when the Equity Credit Facility has been paid out in full, all of TPC’s Units shall be deemed to be TPC’s Dividend Cash Units.

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation.

This Agreement shall be interpreted in accordance with the following:

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

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

1.3 Interpretation of other Loan Documents.

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

1.4 Severability.

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

1.5 Entire Agreement.

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

1.6 **Waiver.**

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

1.7 **Governing Law.**

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

1.8 **Incorporation of Schedules.**

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

Schedule A	Repayment Notice
Schedule B	Borrowing Notice
Schedule C	Material Agreements
Schedule D	Issued and Outstanding Capital Stock and Debt
Schedule E	Liabilities
Schedule F	Address for Notice
Schedule G	List of Security Documents
Schedule H	Authorizations

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

1.9 Conflicts.

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

ARTICLE II
DIVIDEND CREDIT FACILITY

2.1 Dividend Credit Facility.

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

2.2 Commitment and Dividend Credit Facility Limit.

- (1) Hydro shall not be obliged to make any Dividend Credit Advance or Dividend Credit Advances which would cause the Total Outstandings to be greater than the Dividend Credit Facility Commitment, and commencing on the day after the twenty-fifth Anniversary Date, Hydro shall in addition not be obliged to make any Dividend Credit Advance or Dividend Credit Advances which would cause the Total Outstandings, including accrued and unpaid interest and all other amounts owing under the Dividend Credit Facility, to be greater than the Dividend Credit Facility Commitment Cap, provided that where each of NCN and TPC is

otherwise in good standing under the Loan Documents, Hydro shall advance in accordance with the provisions of this Agreement, as a Dividend Credit Advance to NCN, upon request, the lesser of: (i) the amount requested by NCN; (ii) the amount hereunder which would, when advanced, cause the Total Outstandings to equal, but not exceed, the Dividend Credit Facility Commitment; and (iii) if the Advance is requested after the twenty-fifth Anniversary Date, the amount hereunder which would, when advanced, cause the Total Outstandings, including accrued and unpaid interest and all other amounts owing under the Dividend Credit Facility, to equal, but not exceed, the Dividend Credit Facility Commitment Cap.

- (2) The Dividend Credit Facility may be utilized by NCN commencing as of the first Anniversary Date subject to the terms and conditions of this Agreement. The Dividend Credit Advance, if any, available at the end of each Anniversary Date, in accordance with the provisions of this Agreement, must be requested within the time period between November 1 and February 1 in any year.
- (3) The Dividend Credit Facility is a non-revolving credit and the principal amount of any Dividend Credit Advance that is repaid may not be re-borrowed and shall be a permanent reduction of the Dividend Credit Facility Commitment.
- (4) Any available amount under the Dividend Credit Facility that NCN does not request a Dividend Credit Advance for by the date set out in Section 2.2(2) shall be a permanent reduction of the Dividend Credit Facility Commitment.

2.3 Available Dividend Credit Advances.

- (1) Hydro shall, on the terms and conditions of this Agreement, make the Dividend Credit Advances available to NCN under the Dividend Credit Facility in accordance with Section 3.2.

- (2) All Dividend Credit Advances requested hereunder shall be made available to NCN in accordance with Article III.

2.4 Repayment on the Maturity Date.

The Total Outstandings, if any, and all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility shall become due and payable on the Maturity Date and subject to Hydro making an early demand for payment pursuant to Section 8.1 following an Event of Default, NCN shall repay on the Maturity Date, the Total Outstandings, if any, all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility. Notwithstanding the foregoing, if on the Maturity Date, NCN and TPC are not in default in respect of any material provision of the Loan Documents, the amount of the Total Outstandings and all accrued and unpaid interest thereon on the Maturity Date and all other amounts owing to Hydro under the Dividend Credit Facility will, subject to the right to prepay in accordance with the provisions of this Agreement, be repaid to Hydro solely through Hydro receiving all Distributions from time to time on TPC's Units. The Distributions on TPC's Units shall be applied as follows: first, in payment of all costs and expenses owing to Hydro in connection with the Dividend Credit Facility; second, in payment of all accrued and unpaid interest under the Dividend Credit Facility; and third, in repayment of all principal amounts under the Dividend Credit Facility. Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro, as provided for under the Security Documents, until the Total Outstandings and all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility have been repaid in full out of the said Distributions; provided however, that the payments to be made to Hydro pursuant to this Section 2.4 out of the Distributions on TPC's Units, shall be paid in the order of priority as set out in Section 3.7 of the TPC Financing Agreement, and for so long as Distributions are paid to Hydro pursuant to the TPC Financing Agreement or the Revenue Advance Consolidation Agreement, the non-payment of such Distributions to Hydro pursuant to the provisions of this Agreement shall not be deemed to be a default by TPC under this Agreement.

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

2.5 Mandatory Repayments during the Term of this Agreement.

- (1) If, on any day, Hydro notifies NCN that the Total Outstandings exceeds the Dividend Credit Facility Commitment, (and commencing on the day after the twenty-fifth Anniversary Date, the Total Outstandings exceeds the lesser of the Dividend Credit Facility Commitment or the Dividend Credit Facility Commitment Cap) (such excess being referred to herein as the "**Over-Drawn Amount**"), NCN shall repay to Hydro, an amount sufficient to reduce the Total Outstandings by at least the Over-Drawn Amount. Notwithstanding the foregoing, provided that NCN and TPC are not in default in respect of any material provision of the Loan Documents, and subject always to the right to prepay as set out herein, the Over-Drawn Amount and all accrued and unpaid interest thereon and applicable costs and expenses, if any, will be repaid solely through the Distributions from time to time on TPC's Units pursuant to the provisions of the Security Documents. The Distributions on TPC's Units shall be applied as follows: first, in payment of all costs and expenses owing to Hydro in connection with the Dividend Credit Facility; second, in payment of all accrued and unpaid interest under the Dividend Credit Facility; and third, in repayment of all principal amounts under the Dividend Credit Facility. Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro as provided for in the Security Documents until the Over-Drawn Amount and all costs and expenses and accrued and unpaid interest thereon has been repaid in full. The payments made to Hydro pursuant to this Section 2.5(1) out of the Distributions on TPC's Units shall be paid in the order of

priority as set out in Section 3.7 of the TPC Financing Agreement and for so long as Distributions are paid to Hydro pursuant to the TPC Financing Agreement in compliance with such priority provisions, the non-payment of such Distributions to Hydro pursuant to the provisions of this Agreement shall not be deemed to be a default by TPC under this Agreement.

- (2) In addition to all other mandatory repayment obligations provided for in this Agreement and subject always to the right to prepay in accordance with the provisions of this Agreement, NCN shall throughout the term of this Agreement repay to Hydro the Total Outstandings plus all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Dividend Credit Facility solely through Hydro receiving all Distributions on TPC's Units. Distributions on TPC's Units shall be applied as follows: first, in payment of all costs and expenses owing to Hydro in connection with the Dividend Credit Facility (except to the extent that they are dealt with under subsection (1) above); second, in payment of all accrued and unpaid interest under the Dividend Credit Facility (except to the extent that they are dealt with under subsection (1) above); and third, in repayment of all principal amounts under the Dividend Credit Facility (except to the extent that they are dealt with under subsection (1) above). Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro as provided for under the Security Documents until all such amounts have been repaid in full. The amount of any repayment shall be a permanent reduction of the Dividend Credit Facility Commitment. The payments to be made to Hydro pursuant to this Section 2.5(2) out of Distributions on TPC's Units shall be paid in the order of priority as set out in Section 3.7 of the TPC Financing Agreement and for so long as Distributions are paid to Hydro pursuant to the TPC Financing Agreement or the Revenue Advance Consolidation Agreement in compliance with such priority provisions,

the non-payment of such Distributions to Hydro pursuant to the provisions of this Agreement shall not be deemed to be a default by TPC under this Agreement.

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

2.6 Optional Reductions.

- (1) Subject to Section 2.6(2), NCN may prepay, in whole or in part, the Total Outstandings, at any time, upon at least two (2) Business Days notice to Hydro (the "**Repayment Notice**"). Each Repayment Notice shall be in substantially the form of Schedule "A" and shall specify:
- (a) the proposed date of such prepayment or reduction; and
 - (b) the aggregate principal amount of the prepayment or reduction, and, if such Repayment Notice is given, NCN shall:
 - (c) pay Hydro in accordance with such Repayment Notice the amount of prepayment; and
 - (d) pay Hydro all interest on the amount of such prepayment or excess amount accrued to the date of such prepayment.
- (2) Each partial prepayment of Total Outstandings shall be in a minimum aggregate principal amount of \$200,000 and in an integral multiple of \$100,000.

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

- (1) The indebtedness of NCN in respect of all Dividend Credit Advances hereunder shall be evidenced by the account records maintained by Hydro, which shall be *prima facie* evidence of such indebtedness for all purposes, absent error. Hydro shall indemnify and save harmless NCN for losses suffered or costs incurred by NCN due to Hydro's failure to correctly record or calculate any amount, rate, date or other data (including calculations by Hydro to determine any amount) in the account records or in statements or notices issued to NCN, where such failure was due to the gross negligence or willful misconduct of Hydro or any person for whom Hydro is responsible at law. Notwithstanding the foregoing, the failure of Hydro to correctly record or calculate any amount, rate, date or other data (including calculations to determine any amount) in the account records, or in statements or notices issued to the Limited Partnership hereunder shall not affect the obligation of NCN and TPC to pay amounts due hereunder to Hydro in the manner contemplated herein, and in accordance with the other Loan Documents.
- (2) For purposes of the *Interest Act* (Canada):
 - (a) whenever any interest under this Agreement is calculated using a rate based on a period of time other than a calendar year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on such period of time multiplied by (y) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (z) the number of days in such period of time;
 - (b) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; and

- (c) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.
- (3) Within ten (10) Business Days of the last day of each month during this Agreement Hydro shall provide to NCN a written statement setting out the following information as at the last day of each month:
- (a) the Total Outstandings under the Dividend Credit Facility, together with the following information:
 - (i) opening balances;
 - (ii) closing balances;
 - (iii) Dividend Credit Advances provided during the month;
 - (iv) principal repaid during the month, if applicable;
 - (v) interest paid by or on behalf of NCN, and applicable interest rate(s) charged to NCN during the month; and
 - (vi) any costs charged by Hydro to NCN during the month, and any reimbursements made by or on behalf of NCN to Hydro during the month for costs charged by Hydro to NCN.

ARTICLE III

DIVIDEND CREDIT ADVANCES

3.1 Dividend Credit Advances.

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

3.2 Procedure for Borrowing.

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

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

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

3.3 Interest on Dividend Credit Advances.

Each Dividend Credit Advance, or the amount thereof remaining outstanding from time to time, shall bear interest at the rate applicable to the Dividend Credit Advance determined in accordance with this Section 3.3 from the date the Dividend Credit Advance is first received in the account specified by NCN in the applicable Borrowing Notice to the date on which the Dividend Credit Advance is repaid in full or dealt with as otherwise specified in this Agreement. Each Dividend Credit Advance shall bear interest at a rate per annum equal at all times for that Dividend Credit Advance to the Canadian Ten Year Rate in effect on the date the said Dividend Credit Advance is first received in the account specified by NCN in the applicable Borrowing Notice. Interest on each of the Dividend Credit Advances made March 3, 2014, January 5, 2015 and on any date prior to November 1, 2015 shall be calculated monthly and compounded semi-annually from the date of advance to October 31, 2015. After November 1, 2015, if a Dividend Credit Advance is received in the account specified by NCN on a date other than November 1 of

the year, interest on that Dividend Credit Advance shall accrue in the current month and be added to the Total Outstandings. Commencing November 1, 2015 and in each month thereafter Hydro shall calculate a blended interest rate based on the interest rates applicable to each Dividend Credit Advance, in proportion to the amount of each Dividend Credit Advance and the accrued interest thereon to that date, which rate shall be applied to all Dividend Credit Advances and all other amounts owing to Hydro under the Dividend Credit Facility on that date to October 31 of the following year. If there is no Dividend Credit Advance during a month, the blended rate for the month shall continue to apply. Such interest shall be calculated and compounded semi-annually and shall only become due and payable on the Maturity Date subject to the provisions of this Agreement (including payments made through Distributions under Article II, NCN's optional right of prepayment and action taken if an Event of Default occurs). Hydro shall provide NCN with notice of the Canadian Ten Year Rate applicable to each such Dividend Credit Advance and notice of the blended interest rate, together with its supporting calculation of the Canadian Ten Year Rate and the blended interest rate which will constitute, in the absence of error, *prima facie* evidence of the Canadian Ten Year Rate and the blended interest rate applicable to each such Dividend Credit Advance and all other amounts owing to Hydro under the Dividend Credit Facility.

3.4 TPC Financing Agreement.

Notwithstanding any other provision of this Agreement, it is acknowledged and agreed by the parties hereto that in the event that TPC sells all of TPC's Units to Hydro, whether pursuant to any Sale (as that term is defined in the TPC Financing Agreement), or otherwise, the Total Outstandings under the Dividend Credit Facility, all costs hereunder and all other amounts whatsoever owed by NCN to Hydro under this Agreement or any Loan Documents pursuant hereto (including the Guarantee) shall be deemed to have been paid in full and satisfied by the sale of TPC's Units to Hydro. NCN's right to receive Dividend Credit Advances will be suspended when Hydro receives notice that TPC is exercising its right to sell all of TPC's Units pursuant to the provisions of the TPC Financing Agreement or upon Hydro providing notice to

TPC that it is exercising its right to purchase all of TPC's Units pursuant to the provisions of the TPC Financing Agreement. The Dividend Credit Facility will terminate on the date that the sale of TPC's Units is completed in accordance with the provisions of the TPC Financing Agreement.

ARTICLE IV CONDITIONS OF LENDING

4.1 Conditions of All Dividend Credit Advances.

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

(a) **Facility Limits.** The Total Outstandings shall not:

(i) prior to or after giving effect to the Dividend Credit Advance, exceed the Dividend Credit Facility Commitment; provided however that where a Dividend Credit Advance requested by NCN would cause the Total Outstandings to exceed the Dividend Credit Facility Commitment, Hydro shall make a Dividend Credit Advance equal to the amount that shall cause the Total Outstandings to equal, but not exceed, the Dividend Credit Facility Commitment; and

(ii) commencing on the day after the twenty-fifth Anniversary Date, the Total Outstandings and all accrued and unpaid interest, costs and expenses and all other amounts owing under the Dividend Credit Facility shall not, after giving effect to the Dividend Credit Facility Advance, exceed the Dividend Credit Facility Commitment Cap; provided however, that where a Dividend Credit Advance requested by NCN would cause the Total Outstandings and all accrued and unpaid interest, costs and expenses and all other amounts owing under the Dividend Credit Facility to exceed the Dividend Credit Facility Commitment Cap, Hydro

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

(b) **Truth of Representations and Warranties.** The representations and warranties of NCN and TPC contained in this Agreement and in any other Loan Documents to which each is a party, shall be true and correct as of the date on which any Dividend Credit Advance is made with the same force and effect as if such representations and warranties had been made on and as of such date; provided that, to the extent the disclosure in the representations and warranties is no longer true and correct, NCN and TPC shall be entitled to update such disclosure to Hydro, and if such disclosure is not materially adverse it must be approved by Hydro.

(c) **Performance of Covenants.** NCN and TPC shall have fulfilled or complied with all covenants herein contained (or contained in any other Loan Documents to which each is a party) to be performed by it at or prior to the date of such Dividend Credit Advance.

(d) **No Event of Default.** No Event of Default shall have occurred and be continuing.

(e) **Authorizations.** Hydro has obtained such borrowing authority (including the Additional Borrowing Authorizations) as may be required by it from time to time for the due and timely performance of its covenants under the Loan Documents, including in order to enable it to make the Advances requisitioned from time to time by NCN by Borrowing Notices.

(f) **No Change in Laws.** No Law or change in any Law shall have been enacted, the effect of which will be to prohibit Hydro from making any Dividend Credit Advance.

(g) **Borrowing Notice.** Hydro shall have received a Borrowing Notice in compliance with this Agreement.

ARTICLE V REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties.

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

(a) Status and Power.

(i) 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;

(ii) TPC is a corporation duly incorporated and organized and validly subsisting under the laws of Manitoba and has full corporate power and capacity to own its property and carry on its Business. TPC is duly qualified, licenced or registered to carry on business in Manitoba.

(b) Authorization.

(i) NCN has full power and capacity and full legal right to enter into and perform its obligation under this Agreement and the other Loan Documents to which it is

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

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

(c) Enforceability of Agreement.

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

(ii) this Agreement and each other Loan Document to which TPC is a party constitutes legal, valid and binding obligations of TPC enforceable against it in accordance with their respective terms, subject only to any limitation or applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or creditor's rights generally and the discretion that a court may exercise in the granting of equitable remedies;

(d) Government Approval and Regulation. No authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or other Person (other than those that have been, or by the Initial Closing Date will be, duly obtained or made) is required for the due execution, delivery or performance by NCN or TPC of any Loan Document to which NCN or TPC is a party.

(e) Litigation. There is no material action, suit or proceeding which has been commenced (Notice of which has been served on NCN or TPC), or to the best of the knowledge of NCN or TPC, is pending or threatened against NCN or TPC before or by any Governmental Entity, or before any arbitrator or board, which would prevent NCN or TPC from performing its obligations under any of the Loan Documents to which it is a party. NCN and TPC are not in default with respect to any judgment, order, writ, injunction, decree or award of any court, arbitrator, board or other Governmental Entity, nor is there any judgment, order, writ, injunction, decree or award which would prevent NCN or TPC from performing its obligations under any of the Loan Documents to which either is a party.

(f) Imposition of Lien. The consummation of the transactions hereby contemplated and the compliance with the terms, conditions and provisions of this Agreement and each of the other Loan Documents to which it is a party by NCN will not result in or require the creation or imposition of any Lien on any Property of NCN except as otherwise permitted by this Agreement or the Loan Documents. The consummation of the transactions hereby contemplated and the compliance with the terms, conditions and provisions of this Agreement and each of the other Loan Documents to which it is a party by TPC will not result in or require the creation or imposition of any Lien on the Property of TPC except as otherwise permitted by this Agreement or the Loan Documents.

(g) No Other Material Facts. None of:

(i) this Agreement;

(ii) any of the other Loan Documents; or

(iii) any certificate or statement in writing which has been supplied by or on behalf of NCN or TPC and is a document that is required to be delivered to Hydro pursuant to the provisions of this Agreement or any of the other Loan Documents; contains any untrue statement of a material fact, or omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading.

(h) Restrictive Documents.

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

(ii) TPC is not subject to or a party to, any restriction in its constating documents or by-laws, any Notice, any Law, any Claim, any contract or instrument, any Lien, or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement and each of the other Loan Documents to which it is a party or compliance by TPC with the terms, conditions and provisions hereof or thereof or the continuing operation of the Business.

(i) Title to Collateral. TPC is the registered owner and sole beneficial owner of and has good and marketable beneficial title to and is lawfully possessed of its Property free and clear of all Liens, except Permitted Liens. A complete and accurate listing of its Property has been provided to Hydro, including the

Collateral, and TPC has full right to mortgage, pledge, charge and assign to Hydro the Collateral. No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding or commitment, for the purchase from NCN or TPC of the Collateral other than Hydro.

(j) Compliance with Laws. Each of NCN and TPC is in material compliance with all applicable Laws.

(k) No Breach of Contracts. Schedule C, which will be completed and provided by NCN to Hydro on or before the Initial Closing Date, will contain a complete and accurate list of all agreements to which:

(i) NCN and/or TPC is a party in connection with the Corporate Distributions of TPC, the Capital Stock of TPC, the equity interest that NCN has in TPC, TPC's Units and Distributions on TPC's Units;

(ii) NCN is a party in connection with or arising out of the Wuskwatim Project creating liabilities or obligations upon any Person over the term of the agreement in excess of \$75,000; and

(iii) TPC is a party creating liabilities or obligations upon any Person over the term of the agreements in excess of \$75,000 or is otherwise material to TPC (collectively, the "**Material Agreements**"). NCN and TPC have provided copies of all Material Agreements, including amendments or additions thereto, to Hydro. On the date of the execution of each Future Material Agreement (as defined below in Section 6.1(11)), Schedule C shall be deemed to be amended to include such Future Material Agreements and such Future Material Agreements shall be deemed to be Material Agreements for the purposes of this Agreement from and after the date of execution without the necessity of any further action by any of

the parties hereto. Each Material Agreement is in full force and effect, unamended (except as disclosed to Hydro), and there exists no default or event, occurrence, condition or act (including the completion of the transactions contemplated under this Agreement and any other Loan Document) which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become a default thereunder. Neither NCN nor TPC have violated or breached, in any respect, any of the terms or conditions of any Material Agreement and, to the best of the knowledge of NCN and TPC, all the material covenants to be performed by any other party thereto have been fully performed in all material respects.

(l) Books and Records. All books and records of TPC have been fully, properly and accurately kept and completed in accordance with GAAP and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.

(m) Tax Liability. Except for any Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books:

(i) TPC has in a timely manner filed all tax returns, elections, filings and reports with respect to Taxes required by Law to be filed by it and such returns, elections, filings and reports are true, complete and correct;

(ii) TPC has paid, or reserved in its financial statements, all Taxes which are due and payable, and has paid all assessments and reassessments and all other Taxes, governmental charges penalties, interest and fines due and payable by it;

(iii) TPC has no liability, contingent or otherwise, for Taxes, except Taxes not now due and payable with respect to ordinary operations during the current fiscal period adequate provision for the payment of which has been made; and

(iv) TPC has paid as and when due all applicable Taxes and remitted as required by Law all applicable Taxes and deductions and any interest or penalties related thereto.

(n) Shareholder. NCN is the beneficial owner of all of the Capital Stock of TPC free and clear of all Liens except Permitted Liens. The Capital Stock of TPC is owned by the Chief or a Councillor of NCN, as bare trustee for NCN. No Person has any written or oral agreement, option, understanding or commitment, or any right capable of becoming an agreement, option, understanding, commitment, or right for purchase of any of the Capital Stock of TPC or to receive payment based on the value of any such Capital Stock. The issued and outstanding Capital Stock and Debt (excluding Debt under this Agreement) of TPC and the registered beneficial holders of such Capital Stock and Debt (excluding Debt under this Agreement) will be as described in Schedule D, which will be completed and provided by NCN to Hydro on or before the Initial Closing Date. Hydro acknowledges that the NCN Deed of Assignment shall not be deemed to be a breach of this representation.

(o) Liabilities. TPC does not have any liabilities, whether accrued, absolute, contingent or otherwise, of any kind or nature whatsoever, except as otherwise disclosed in Schedule E, which will be completed and provided by NCN to Hydro on or before the Initial Closing Date or pursuant to the Loan Documents, and except as incurred after the date hereof in compliance with this Agreement and the Loan Documents.

(p) No Event of Default. No Event of Default has occurred, nor has any event or condition occurred which, with the giving of Notice or passage of time, or both, would constitute and Event of Default under the Loan Documents. No default has occurred nor has any event or condition occurred which, with the giving of Notice

or passage of time, or both, would constitute a default under any one or more of the Material Agreements which could result in the acceleration of amounts owing by NCN or TPC under any such Material Agreements.

(q) Financial Information. The financial statements of TPC furnished to Hydro pursuant to this Agreement have been prepared in accordance with GAAP, consistently applied, and present fairly the financial position of TPC as at the dates thereof and the results of their operations for the periods then ended. All balance sheets, all statements of operations, shareholders' equity and cash flow and all other financial information of TPC furnished pursuant to Section 6.1(a)(1) have been and will for periods following the Initial Closing be prepared in accordance with GAAP consistently applied, and do or will present fairly the consolidated financial position of TPC thereby as at the dates thereof and the results of their operations for the periods then ended.

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

5.2 Survival of Representations and Warranties.

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

5.3 Representations by Hydro.

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

(a) Hydro is a corporation duly incorporated and organized and validly subsisting under the Laws of Manitoba and has the corporate power and authority to own or lease its property and to enter into this Agreement and each of the other Loan Documents to which it is a party and to perform its obligations this Agreement and the Loan Documents.

(b) This Agreement and the Loan Documents to which Hydro is a party have been duly authorized, executed and delivered by Hydro and are legal, valid and binding obligations of Hydro enforceable, against Hydro by NCN and TPC to the extent that NCN or TPC is a party thereto, in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction or, by this Agreement, at the discretion of the Arbitrator.

(c) Subject only to obtaining the Authorizations described in Schedule H, the execution and delivery of this Agreement and each of the Loan Documents to which Hydro is a party and the consummation the transactions herein provided for by Hydro will not result in:

(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;

(B) any provision of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) of Hydro;

(D) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over Hydro; or

- (E) any applicable law, statute, ordinance, regulation or rule, including, without limitation, the *Hydro Act*; or
- (ii) the creation or imposition of any Lien on any investment transaction or any of the property or assets of Hydro.
- (d) Hydro is a resident of Canada for the purposes of the Income Tax Act (Canada).
- (e) None of (i) this Agreement; (ii) any of the other Loan Documents; or (iii) any certificate or statement in writing which has been supplied by or on behalf of Hydro and is a document that is required to be delivered to Hydro pursuant to this Agreement or any of the other Loan Documents, contains any untrue statement of a material fact, or omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading.
- (f) There is no requirement for Hydro to make any filing with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of any government regulatory authority as a condition to the lawful consummation by Hydro of the transaction contemplated by this Agreement and each other Loan Document to which it is a party, except as described in Schedule H.

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

5.4 Survival of Representations and Warranties.

All the representations and warranties of Hydro contained in Section 5.3 shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all

amounts owing hereunder have been repaid and the Dividend Credit Facility has been terminated, notwithstanding any investigation made at any time by or on behalf of NCN or TPC.

ARTICLE VI
COVENANTS OF NCN AND TPC

6.1 Affirmative Covenants.

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

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

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

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

(ii) promptly after the occurrence of any Event of Default, a statement of NCN setting forth the details of such Event of Default and the action which NCN and/or TPC propose to take or have taken with respect thereto;

(iii) promptly after the commencement thereof, Notice of Claims which have been commenced against NCN or TPC (notice of which has been served on NCN or TPC), or to the best of the knowledge of NCN or TPC, are pending or threatened against NCN or TPC for amounts which exceed \$75,000 in the aggregate at any time or affect any of the Collateral;

(iv) promptly after the occurrence of any material development with respect to any Claims referred to in Section 6.1(2)(c), and in any event within three (3) Business Days after NCN or TPC obtains knowledge of the occurrence thereof, Notice thereof to Hydro, and, to the extent Hydro requests them, copies of all documentation relating thereto; and

(v) such other information and reports relating to TPC, the Collateral or the Business or NCN's interest in TPC, as Hydro may from time to time reasonably request.

(c) Existence. Preserve and maintain TPC's corporate existence.

(d) Compliance with Laws. Comply, in all material respects with the requirements of all applicable Laws.

(e) Payment of Taxes, Claims and Governmental Licence Fees. Pay and discharge in respect of TPC, before the same shall become delinquent:

(i) all Taxes, governmental assessments, charges or levies and Claims imposed upon it or upon any of its Property;

(ii) all lawful Claims which, if unpaid, might by Law become a Lien upon its Property, in each case except for any such Tax, assessment, charge, levy or Claim which would result in a Lien which is a Permitted Lien; and

(iii) all fees payable to Governmental Entities or other authorities in connection with all governmental licences issued to and held by TPC (if any).

(f) Keeping of Books. Keep or cause to be kept, proper books, records and accounts, in which full and correct entries shall be made of all of TPC's financial transactions in accordance with GAAP.

(g) Visitation and Inspection. If, in the reasonable opinion of Hydro, an Event of Default has or may have occurred, at any reasonable time or times and upon reasonable prior notice given to NCN and TPC by Hydro, permit Hydro or any of its authorized representatives, full and reasonable access to the premises of NCN and TPC and obtain any consents and waivers from any Person necessary, in the reasonable opinion of Hydro to ensure such access, for the purposes of inspecting (and, where required, taking copies of) the respective business, financial and computer records of NCN (but relating to the Wuskwatim Project only) and TPC and to discuss the respective business, financial and computer records of NCN (but relating to the Wuskwatim Project only) and TPC, and compliance by NCN and TPC with the terms of this Agreement and the other Loan Documents (to the extent that each is a party thereto), with the management and Auditors thereof.

(h) Protect Hydro Liens. At all times take all action and supply Hydro with all such information necessary to allow Hydro to create, maintain, perfect, protect and preserve the Liens provided for under the Security Documents and confer upon Hydro the security interest intended to be created thereby.

(i) Payments. Pay all amounts of principal, interest, costs and expenses in the manner, on the dates, at the times and at the places specified in this Agreement or under any other Loan Document, but subject to the provisions of Section 8.2 in respect of costs and expenses.

(j) Payment of Preferred Claims. Pay, as and when due, any and all amounts which may result in a Lien on the Collateral under applicable Law (other than a Permitted Lien) whether or not such Lien is entitled to priority over the Liens in favour of Hydro under the Security Documents.

(k) Loan Documents. Execute and deliver to Hydro the Loan Documents.

(l) Material Agreements. Comply with the provisions of all of the Materials Agreements. In respect of each Material Agreement executed by NCN and/or TPC after the date hereof (each a “**Future Material Agreement**”), provide to Hydro, a certified copy of each Future Material Agreement.

(m) Notice of Defaults. Immediately notify Hydro:

(i) of any Event of Default or of any event, occurrence, condition or act which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become an Event of Default, or of any material default (either by NCN or TPC) under any Material Agreement or of any event which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become a material default under or would otherwise allow the termination of any Material Agreement, and thereafter provide Hydro with all information reasonably requested by Hydro from time to time concerning the status thereof;

(ii) on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding, labour or industrial dispute the result of which if determined

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

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

6.2 Negative Covenants.

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

(a) Business Activity. TPC shall not engage in any business activity except the Business.

(b) Liens. No Liens shall be created, incurred, assumed or suffered to exist, on any of TPC's Property including the Collateral and the Capital Stock of TPC other than Permitted Liens. For greater certainty this does not prohibit the NCN Deed of Assignment.

(c) Disposal of Property. None of the Collateral shall be disposed of by TPC.

(d) Debt. Except with the prior consent of Hydro, TPC shall not allow any Debt of TPC to be created, incurred, assumed or suffered to exist, directly, or contingently or otherwise, other than:

(i) Debt to Hydro;

(ii) unsecured current liabilities incurred and payable in the ordinary course of the Business and not represented by any note, bond or debenture; or

(iii) Purchase Money Debt, provided that the payments under such Purchase Money Debt does not exceed an aggregate amount in any one year period of \$15,000.

(e) Mergers. TPC shall not reorganize, amalgamate, merge, consolidate or otherwise enter into any form of business combination with any other Person.

(f) Guarantees and Indemnities. TPC shall not guarantee or indemnify or give financial assistance or incur any contingent liability in respect of any Debt or any other obligations or liabilities of any other Person at any time other than pursuant to the Guarantee.

(g) Dividends. TPC shall not:

(i) declare or pay any dividends or any distributions after Hydro has provided notice to TPC that an Event of Default has occurred; nor

(ii) declare or pay any dividends or other distributions, in any other circumstances if, after declaring or paying such dividend or other distribution, TPC would not be able to meet its obligations under the Loan Documents.

(h) Financial Year and Auditors. TPC shall not change its Financial Year end or its Auditors.

(i) Change in Constatting Documents or Capital Stock. There shall be no change in the constating documents or by-laws of TPC as delivered to Hydro which would amend the authorized shares or other equity securities of TPC or otherwise be detrimental to the rights or interests of Hydro under any of the Loan Documents or issue any Capital Stock in TPC that would cause an Event of Default to occur or would cause a Change of Control of TPC.

(j) Material Agreements. There shall be no amendment, supplement, termination or waiver, or entering into of any forbearance from exercising any rights with respect to, any of the terms of any Material Agreement in a manner which would cause a Material Adverse Business Effect or an Event of Default hereunder.

(k) Change of Control. There shall be no Change of Control.

(l) Change of Registered Owner. Change the registered owner of the Capital Stock of TPC to any person other than the Chief or a Councillor of NCN, as bare trustee for NCN, or change the form of bare trustee declaration prior to obtaining the written consent of Hydro to the change.

6.3 **Cross-Default.**

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

ARTICLE VII
SECURITY

7.1 Security.

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

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

7.2 Registrations.

Hydro, in its sole discretion, may register, file or record the Liens constituted by the Security Documents in all jurisdictions where such registration, filing, or recording is necessary or of advantage to the creation, perfection, preservation or protection of such Liens.

7.3 **Renewals.**

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

ARTICLE VIII
EVENTS OF DEFAULT

8.1 **Events of Default.**

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

- (a) NCN shall fail to pay any portion of the principal or interest or any fees or other amounts due hereunder or under any of the other Loan Documents on the date when due hereunder or thereunder and such amount remains unpaid for a period of six (6) Business Days after Hydro notifies NCN that the amount is overdue;

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

- (b) any representation or warranty or certification made or deemed to be made by any NCN or TPC or pursuant to or in connection with any of the Loan Documents delivered to Hydro shall prove to have been incorrect in any material respect when made or deemed to have been made;
- (c) NCN or TPC shall fail to perform or observe any other term, covenant or agreement contained in any of the Loan Documents on its part to be performed or observed and such failure shall remain unremedied for fifteen (15) Business Days

(the “**Cure Period**”) after written notice thereof shall have been given to NCN and TPC by Hydro; provided that the length of the Cure Period shall be extended by Hydro in its unfettered discretion where NCN and TPC demonstrate to Hydro that the breach is not capable of being cured within fifteen (15) Business Days but provides Hydro, within fifteen (15) Business Days, with a plan for curing the breach within sixty (60) calendar days and in good faith implements such plan;

- (d) any of the Loan Documents, at any time, is not or ceases to be valid or enforceable in whole or in part, or if any Lien intended to be created by any of the Security Documents is not or ceases to be a valid and perfected Lien having the ranking or priority contemplated thereby, or if the validity or enforceability of any of the Loan Documents or the validity or perfection of any such Lien shall be contested by any party thereto or any other Person (unless such contestation by such party or other Person is being opposed diligently, in good faith and by proper legal proceedings by Hydro with the assistance of NCN and TPC and Hydro covenants to oppose such contestation in good faith, where in its discretion, there is a reasonable prospect of success), or if any Person (other than Hydro or the Limited Partnership) obtains any interest in the Collateral or any part thereof (except Permitted Liens); provided however, that this provision shall only be invoked where Hydro, acting reasonably, has determined that its inability to enforce the said Lien with its intended ranking or priority cannot be cured by Hydro within a reasonable period of time or without Hydro being materially adversely affected notwithstanding that NCN and TPC have provided a written undertaking to assist Hydro in the manner set out therein to cure the inability of Hydro to enforce the said Lien with its intended ranking or priority;
- (e) with respect to Debt of TPC under any one or more agreements other than the Debt under the Loan Documents,

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

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

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

- (m) TPC is enjoined or restrained in any material way by an order of any Governmental Entity, arbitrator or board in Canada or elsewhere from conducting the Business;
- (n) the occurrence of a Material Adverse Business Effect;
- (o) the occurrence an Event of Default committed by TPC (as such term is defined in the TPC Financing Agreement); or
- (p) the occurrence of any event, condition or circumstance which, with the giving of notice or passage of time or both, would constitute an Event of Default, after the expiration of, in the case of a Loan Document, the applicable Cure Period or in the case of any other agreement, the applicable cure period (if any) thereunder;

then, and in any such event, Hydro shall be entitled by written notice to NCN and TPC to: (i) terminate the obligation of Hydro to make further Dividend Credit Advances under the Dividend Credit Facility; and/or (ii) demand repayment of the Total Outstandings owed by NCN to Hydro under the Dividend Credit Facility, whereupon the Total Outstandings and other amounts payable thereunder shall become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by NCN and TPC except such notices as may be required under applicable Laws. Provided, however that Hydro shall only have recourse to the Collateral for repayment of the Obligations and further provided, however, that upon any Event of Default specified in Section 8.1(g), the obligation of Hydro to make Dividend Credit Advances hereunder shall automatically terminate.

8.2 Expenses of Hydro.

Upon the occurrence of any Event of Default which has not been waived and is continuing, Hydro may take any action Hydro considers advisable, acting reasonably, to remedy the effect of

such Event of Default. All reasonable expenses, costs and charges incurred by or on behalf of Hydro in connection with:

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

8.3 Remedies Cumulative.

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

8.4 Allocations.

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

ARTICLE IX
PAYMENTS, COMPUTATIONS AND INDEMNITIES

9.1 Timing of Payments under this Agreement.

Unless otherwise expressly provided in this Agreement:

(a) NCN shall make any payment required to be made by it to Hydro by depositing the amount of such payment in Hydro's Account not later than 11:00 a.m. (Winnipeg time) on the date such payment is due; and

(b) Hydro shall make any Dividend Credit Advance or other payment to NCN under this Agreement by crediting or causing the crediting of the account of NCN directed by NCN in the applicable Borrowing Notice with the amount of such Dividend Credit Advance on the date such Dividend Credit Advance is to be made.

9.2 Payments on Non-Business Days.

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

9.3 Overdue Amounts.

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

9.4 Application of Payments, Repayments and Prepayments.

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

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

9.5 Computations of Interest and Fees.

(a) All computations of interest shall be made by Hydro, based on the semi-annual interest computation (and not the number of days in the six (6) month period) and on the basis of a year of 365 days.

(b) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the aggregate “interest” (as defined in Section 347 of the *Criminal Code* (Canada), as the same may be amended, replaced or re-enacted from time to time) payable under this Agreement exceed the maximum amount of interest on the “credit advanced” (as defined in that Section) under this Agreement lawfully permitted under that Section and, if any payment, collection or demand pursuant to this Agreement in respect of “interest” (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand shall be refunded to NCN. For purposes of this Agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the relevant Dividend Credit Advance is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of any dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Hydro will be conclusive for the purposes of such determination.

(c) Each determination by Hydro of any amount payable hereunder by NCN shall be *prima facie* evidence of the amount payable for all purposes absent error.

9.6 Indemnity for Change in Circumstances.

(a) If any change in Law, or any change in the interpretation or application by any Governmental Entity of any Law occurring or becoming effective after the date of this Agreement or any compliance by Hydro with any direction or requirement

having the force of Law) of any Governmental Entity made or becoming effective after the date of this Agreement, causes Loss to Hydro by:

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

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

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

- (i) immediately notify Hydro of such requirement;
- (ii) pay to the appropriate authority the full amount required to be so withheld or deducted before penalties attach thereto or interest accrues thereon;
- (iii) promptly forward to Hydro an official receipt or other documentation reasonably satisfactory to Hydro evidencing such payment to such authority; and

(iv) pay to Hydro an additional amount so that Hydro receives the full amount it would have received had no such deduction or withholding been required.

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

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

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

9.7 Indemnity.

(a) NCN hereby agrees to indemnify, exonerate and hold Hydro and its officers, directors, employees, agents and other representatives (in this Section 9.7(1), the “**Indemnified Parties**”) free and harmless from and against any and all Claims, demands, actions, causes of action, suits, losses, costs (including all documentary, recording, filing, mortgage duties), charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 9.7(1), the “**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them or, with respect to, or as a direct or indirect result of:

- (i) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Dividend Credit Advances obtained hereunder; or
- (ii) the execution, delivery, performance or enforcement of this Agreement or any Loan Documents, except for such Indemnified Liabilities that a court of competent jurisdiction determines or rules to be on account of the relevant gross negligence or willful misconduct of the Indemnified Party or any Person for whom such Indemnified Party is responsible at law [in which event, such Party shall indemnify TPC and its officers and directors and NCN and its Chief and Councillors (to the extent that each of NCN's Chiefs and Councillors is liable at law in his or her respective capacity as part of Chief and Council) for all Indemnified Liabilities paid, incurred or suffered by or asserted against any of them arising out of such gross negligence or willful misconduct].

(b) All obligations provided for in this Section 9.7 shall not be reduced or impaired by any investigation made by or on behalf of Hydro.

(c) If, for any reason, the obligations of NCN pursuant to this Section 9.7 shall be unenforceable, NCN agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or willful misconduct or any Person for whom such Indemnified Party is responsible at law [in such event such Party shall indemnify TPC and its officers and directors and NCN and its Chief and Councillors (to the extent that each of NCN's Chiefs and Councillors is liable at law in his or her respective capacity as part of Chief and Council), for all Indemnified Liabilities paid, incurred or suffered by or asserted against any of them arising out of such gross negligence or willful misconduct].

9.8 **Contribution.**

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

9.9 **Confirmation of Limited Recourse.**

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

ARTICLE X
DISPUTE RESOLUTION

10.1 **Dispute Resolution.**

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

ARTICLE XI
GENERAL PROVISIONS

11.1 **Notices.**

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

Each Borrowing Notice and Repayment Notice shall be irrevocable and binding on NCN.

11.2 **Time of the Essence.**

Time shall be of the essence of this Agreement.

11.3 **Third Party Beneficiaries.**

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the parties hereto and the Persons contemplated in Section 9.7 or Section 11.7, and no Person, other than the parties hereto and the Persons

contemplated in Section 9.7 or Section 11.7, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. For greater certainty, nothing in this Section 11.3 is intended to prevent or restrict the Taskinigahp Trust from receiving Dividends declared by the Board of Directors of TPC pursuant to the NCN Deed of Assignment subject always to TPC's compliance with the covenants, representations and warranties of this Agreement.

11.4 Enurement.

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

11.5 Counterparts.

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

11.6 Knowledge.

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

11.7 Assignment.

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

11.8 **Non-Merger.**

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

[Execution pages follow]

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

NISICHAWAYASIIHK CREE NATION

Marcel Moody, Chief

Ron Spence, Deputy Chief

Patrick Linklater, Councillor

Shirley L. Linklater, Councillor

Bonnie Linklater, Councillor

Willie Moore, Councillor

TASKINIGAHP POWER CORPORATION

Per: _____
Name:
Title: President

Per: _____
Name:
Title: Vice-President

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

THE MANITOBA HYDRO-ELECTRIC BOARD

Per: _____
Name:
Title: President and Chief Executive
Officer

Per: _____
Name:
Title: Assistant Corporate Secretary

SCHEDULE A
REPAYMENT NOTICE

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

FROM: NISICHAWAYASIIHK CREE NATION (“NCN”)

This Repayment Notice is delivered to you pursuant to Section 2.6 of the financing agreement (the “Amended and Restated NCN Financing Agreement”) dated Effective April 1, 2015 between NCN, as borrower, Taskinigahp Power Corporation and Hydro, as lender. All capitalized terms used in this Repayment Notice and defined in the NCN Financing Agreement shall have the meanings defined in the NCN Financing Agreement.

1. NCN hereby gives notice of repayment as follows:

- (a) Date of repayment: _____
- (b) Type of Advance: _____
- (c) Amount of principal being repaid: _____

NISICHAWAYASIIHK CREE NATION

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

SCHEDULE B
BORROWING NOTICE

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

From: NISICHAWAYASIHK CREE NATION (“NCN”)
TASKINIGAHP POWER CORPORATION (“TPC”)

This Borrowing Notice is delivered to you pursuant to Section 3.2 of the amended and restated financing agreement (the “NCN Financing Agreement”) dated as of April 1, 2015 between NCN, as borrower, TPC and Hydro, as lender. All capitalized terms used in this Borrowing Notice and defined in the NCN Financing Agreement shall have the meaning defined in the NCN Financing Agreement.

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

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

2. NCN and TPC hereby certify that:

- (a) All of the representations and warranties of NCN and TPC contained in Section 5.1 of the NCN Financing Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of the date hereof (other than those representations and warranties in Section 5.1 which are specifically limited to a particular date) and except as disclosed in writing to, and accepted in writing by Hydro.
- (b) All of the covenants of NCN and TPC contained in Article VI of the NCN Financing Agreement together with all of the conditions precedent to an Advance in Article IV of the NCN Financing Agreement (to the extent they are within NCN’s and/or TPC’s control) have been complied with or met in all material respects, except as disclosed in writing to, and accepted in writing by Hydro.

- (c) No Event of Default has occurred and is continuing on the date hereof nor will any Event of Default occur as a result of the aforementioned Dividend Credit Advance, except as disclosed in writing to, and accepted in writing by Hydro.

DATED:

NISICHAWAYASIIHK CREE NATION

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

TASKINIGAHP POWER CORPORATION

Per: _____

Name:

Title:

Per: _____

Name:

Title:

SCHEDULE C
MATERIAL AGREEMENTS .

Provided on Initial Closing

SCHEDULE D

ISSUED AND OUTSTANDING CAPITAL STOCK AND DEBT

Provided on Initial Closing

SCHEDULE E

LIABILITIES

Provided on Initial Closing

SCHEDULE F

ADDRESS FOR NOTICE

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

Fax Number: (204) 484-2392

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

Fax Number: (204) 484-2392

Manitoba Hydro
Attention: General Counsel
360 Portage Avenue Winnipeg, MB

Fax Number: (204) 360-4947

SCHEDULE G

LIST OF SECURITY DOCUMENTS

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

SCHEDULE H

AUTHORIZATIONS - HYDRO

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

SCHEDULE 7.1
AMENDED AND RESTATED TPC FINANCING AGREEMENT

**AMENDED AND RESTATED TPC FINANCING
AGREEMENT**

between

TASKINIGAHP POWER CORPORATION

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD

Effective March 31, 2015

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AMENDED AND RESTATED TPC FINANCING AGREEMENT

Effective the 31st day of March 2015

B E T W E E N:

TASKINIGAHP POWER CORPORATION,

(hereinafter referred to as “TPC”)

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter referred to as “Hydro”)

The parties agree as follows:

ARTICLE I INTERPRETATION

1.1 Defined Terms.

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

“**Advances**” means advances made by Hydro under the Equity Credit Facility in this Agreement in Canadian Dollars and “**Advance**” means any one of such Advances.

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

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

contributed by the Limited Partners to the Limited Partnership pursuant to the provisions of the Limited Partnership Agreement.

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

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

“**Approved Funds**” means either: (i) funds that TPC will use to repay any principal amount under the Equity Credit Facility, that Hydro has approved pursuant to the Credit Facility Repayment Certification provided by TPC in accordance with Section 4.5; or (ii) funds that TPC will use to make a payment to the Limited Partnership, that Hydro has approved pursuant to the Limited Partnership Payment Certification.

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

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

“**Banker’s Acceptance Rate**” means the closing rate on any particular day for a one month Canadian Dollar banker’s acceptance, as traced in Bloomberg using the CDORO1 index. Where any Banker’s Acceptance Rate or average of a number of Banker’s Acceptance Rates is used in the

calculation of any interest rate or amount due by TPC hereunder (including in the determination of the Canadian Dollar Floating Rate), Hydro shall provide TPC with a print-out of the CDOR01 index screen used to derive such rate or rates.

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

“**Business**” means the business of TPC which consists of owning TPC’s Units, being a limited partner in the Limited Partnership and making such other investment, administrative and business decisions as may be ancillary thereto and carrying out such functions and fulfilling such obligations as are required or permitted pursuant to the provisions of the PDA.

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

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

“**Canada Yield Price**” means with respect to the repayment of Equity Credit Advances the principal amount that is being repaid plus or minus an amount calculated at 10:00 a.m. (Winnipeg time) on the Business Day preceding the day on which the principal amount is to be repaid which in total if invested on that day would provide a yield to maturity equal to the Government of Canada Yield, plus the Canadian Yield Spread, excluding commissions plus the Canadian Dollar Guarantee Rate. The Canada Yield Price will be determined based on the median of the three investment dealer quotes obtained by Hydro.

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

rate (expressed as a percentage rate per annum) shall be based on the average of the daily Banker's Acceptance Rates for that month plus the average of the daily Canadian Dollar Guarantee Rates for that month plus one (1%) percent per annum.

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

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

"Canadian Yield Spread" means for any particular date, the difference between the Government of Canada Yield determined for that date and the yield to maturity on such day compounded semi-annually which a non-callable Manitoba bond would carry if issued in Canadian Dollars on that day at 10:00 a.m. (Winnipeg time), including commission costs, at 100% of its principal amount on such day with the term to maturity equal to the remaining term to Maturity for the Equity Credit Advances that are being repaid. The Canadian Yield Spread will be determined by Hydro obtaining three rate quotes from investment dealers and using the median of the three rate quotes obtained.

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

"Change of Control" means any change which results in NCN no longer directly owning beneficially on a fully diluted basis 100% of the Capital Stock of TPC (and the unfettered right to direct the exercise of voting rights in respect thereto in accordance with the provisions of the bare trustee declaration pursuant to which the Chief or a Councillor of NCN, as the registered owner of 100% of the Capital Stock of TPC, as bare trustee for NCN, commits to vote such Capital Stock in

accordance with the direction of Chief and Council of NCN), and for greater certainty the NCN Deed of Assignment does not effect a Change of Control.

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

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

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

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

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

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

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

“**Credit Facility Repayment Certification**” has the meaning specified in Section 4.5.

“**Cure Period**” has the meaning specified in Section 12.1(c).

“**Date of the PDA**” has the meaning ascribed thereto in the PDA.

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

(i) all obligations of such Person for borrowed money or Advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(ii) all obligations of such Person, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker’s acceptances issued for the account of such Person; and

(iii) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Debt is to be determined (excluding trade payables incurred in the ordinary course of business).

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

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

“**Dividend Credit Facility**” has the meaning ascribed thereto in the NCN Financing Agreement.

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

“**Equity Credit Facility**” means the non-revolving credit facility to be made available to TPC by Hydro in the maximum amount of the Equity Credit Facility Commitment and in accordance with the terms of this Agreement.

“Equity Credit Facility Commitment” means the aggregate principal amount of ninety-two million three hundred sixty-two thousand (\$92,362,000) dollars.

“Event of Default” has the meaning specified in Section 12.1.

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

“Final Investment Closing” means 10:00 a.m. on the Final Investment Date.

“Final Investment Date” means January 1, 2015.

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

“Future Material Agreement” has the meaning specified in Section 10.1(13).

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

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

“Government Funds” means any funds provided or advanced to NCN or TPC by Canada or Manitoba, or by any crown corporation, agency, department or instrumentality of Canada or Manitoba on the condition or requirement that such funds are to be used for investment through or by TPC in the Limited Partnership, and which TPC:

- (i) uses to repay any principal amount outstanding under the Equity Credit Facility that Hydro has approved pursuant to a Credit Facility Repayment Certification (which, for greater certainty, does not include any other amount paid to Hydro under the Equity Credit Facility); or
- (ii) uses to make a payment to the Limited Partnership that Hydro has approved pursuant to a Limited Partnership Payment Certification;

and, for greater certainty, does not include any grants, loans or funds provided or advanced by any of the said parties to NCN or TPC without any condition or requirement that such grants, loans or funds are to be used for investment through or by TPC in the Limited Partnership, in which event the said grants, loans or funds will, after TPC's repayment of an Advance or payment to the Limited Partnership, as applicable, form part of TPC's Own Funds hereunder, without further qualification as "Government Funds".

"Government of Canada Yield" means for any particular date, the yield to maturity on such date compounded semi-annually which a non-callable Government of Canada bond would carry if issued, in Canadian Dollars, at 100% of its principal amount on such day at 10:00 a.m. (Winnipeg time) with a term to maturity equal to the remaining term to Maturity for the Equity Credit Advance that is being repaid. The Government of Canada Yield will be the yield determined by Hydro obtaining three rate quotes from investment dealers and using the median of the three rate quotes obtained.

"Governmental Entity" means any:

- (i) federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign;
- (ii) any agent, commission, board, or authority of any of the foregoing; or

- (iii) any body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing except not including Hydro for the purposes of this Agreement.

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

“Hydro Liens” means:

- (i) Liens in favour of Hydro created by the Security Documents hereunder or by the Security Documents (as defined in the NCN Financing Agreement); and
- (ii) Liens in favour of Hydro created by the Revenue Advance Consolidation Agreement and the security agreements provided by TPC to Hydro pursuant to that agreement.

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

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

“**Initial TPC Financing Agreement**” means the TPC Financing Agreement entered into between TPC and Hydro dated June 28, 2006 which agreement remained in effect to and including March 31, 2015.

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

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

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

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

“**Limited Partnership Account**” means the Canadian Dollar account maintained by the Limited Partnership at Royal Bank of Canada, the particulars of which shall have been notified by the Limited Partnership to Hydro.

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

“**Limited Partnership Payment Certification**” has the meaning specified in Section 10.2(11).

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

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

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

“**Market Make-whole Payment**” has the meaning specified in Section 13.11.

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

- (i) the ability of TPC to perform any of its material obligations under the Loan Documents; or
- (ii) the ability of Hydro to enforce any of the material obligations of TPC under the Loan Documents, where Hydro, acting reasonably, has determined that its ability to enforce the said material obligations cannot be cured by Hydro

within a reasonable period of time or without Hydro being materially adversely affected, notwithstanding that TPC has provided its written undertaking to assist Hydro in the manner set out therein to cure the inability of Hydro to enforce the said material obligations of TPC under the Loan Documents.

“**Material Agreements**” has the meaning specified in Section 9.1(11).

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

“**Maturity Sale Conditions**” means:

- (i) NCN owning beneficially on a fully diluted basis 100% of the Capital Stock of TPC free and clear of all Liens except Permitted Liens (and the unfettered right to direct the exercise of voting rights in respect thereto in accordance with the provisions of a bare trustee declaration pursuant to which the Chief or a Councillor of NCN, as the registered owner of 100% of the Capital Stock of TPC as bare trustee for NCN, commits to vote such Capital Stock in accordance with the directions of Chief and Council of NCN);
- (ii) TPC is the registered owner and sole beneficial owner of and has good and marketable title to and is lawfully possessed of the Maturity Sale Units free and clear of all Liens except the Permitted Liens and such other Liens as Hydro, on the Sale Closing Date, may in its unfettered discretion accept in writing, and TPC has the full right to sell and transfer the Maturity Sale Units to Hydro;
- (iii) no person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement,

option, understanding, commitment or right for the purchase from TPC of the Maturity Sale Units other than Hydro;

- (iv) no Person has any written or oral agreement, option, understanding or commitment or any right capable of becoming any agreement, option, understanding, commitment or right for the purchase of any of the Capital Stock of TPC; and
- (v) the consummation of the transactions contemplated by the exercise of the Maturity Sale Right will not result in the creation or imposition of any Lien on the Maturity Sale Units (other than such other Liens as Hydro, on the Maturity Date, may in its unfettered discretion accept in writing).

“Maturity Sale Right” has the meaning specified in Section 5.1(b).

“Maturity Sale Units” has the meaning specified in Section 5.1(b).

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

“NCN Business” has the meaning ascribed thereto in the PDA.

“NCN Deed of Assignment” has the meaning ascribed thereto in the PDA.

“NCN Financing Agreement” means the amended and restated financing agreement dated April 16, 2015 between NCN, TPC, and Hydro.

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

“**Notice of Sale**” has the meaning specified in Section 5.5.

“**Obligations**” has the meaning specified in Section 11.1.

“**PDA**” means the Project Development Agreement dated June 26, 2006 made between NCN, Hydro, TPC, the General Partner and the Limited Partnership as supplemented and amended by PDA Supplement No. 1 dated March 15, 2011 and PDA Supplement No. 2 dated April 16, 2015.

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

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

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

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

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

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

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

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

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

“**Repayment Notice**” has the meaning specified in Section 4.5.

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

“**Sale**” means a transaction of purchase and sale of all or a portion of TPC’s Units pursuant to Article V.

“**Sale Certificates**” has the meaning specified in Section 7.1(2)(a).

“**Sale Closing Date**” has the meaning specified in Section 7.1(1)(a).

“**Sale Units**” means the, the Twenty-Fifth Anniversary Sale Units, the Maturity Sale Units or the Term Sale Units, as the context requires.

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

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

amount” for each borrowing is equal to the principal amount of each borrowing multiplied by the number of days the borrowing was outstanding during the month divided by 365.

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

“**TPC’s Cash Units**” means:

(i) on the Final Investment Date that number of TPC’s Units equal to (A) divided by (B) where (A) equals the number of TPC’s Units on the Final Investment Date multiplied by TPC’s Invested Cash as of that date; and (B) equals the sum of: (i) the aggregate of the amount of Equity Credit Advances which remain outstanding on that date; and (ii) TPC’s Invested Cash as of that date; and

(ii) on any particular day after the Final Investment Date (the “**Measurement Date**”) until the date that the Equity Credit Facility has been paid in full, that number of TPC’s Units equal to (A) divided by (B) where (A) is the product of: (i) the number of TPC’s Cash Units on the Final Investment Date, multiplied by (ii) the number of TPC’s Units on the Measurement Date; and (B) equals the number of TPC’s Units on the Final Investment Date; and

For greater certainty, on the date when the Equity Credit Facility has been paid out in full, all of TPC’s Units shall be deemed to be TPC’s Cash Units.

“**TPC’s Invested Cash**” means on any particular day, the sum of all amounts invested by TPC in the Limited Partnership using Approved Funds. For greater certainty:

- (i) this does not include the proceeds of Equity Credit Advances;
- (ii) this does not include any amount for interest, costs, expenses or indemnity reimbursed or paid to Hydro hereunder; and
- (iii) this does include all of TPC's Own Funds (which includes Government Funds) and all of TPC's Third Party Funds used by TPC either:
 - (A) to repay any principal amount outstanding under a Credit Facility that Hydro has approved pursuant to a Credit Facility Repayment Certification; or
 - (B) to make a payment to the Limited Partnership that Hydro has approved pursuant to a Limited Partnership Payment Certification (including, without limitation, TPC's Cash Subscription Payment);

all of which amounts shall, after approval has been granted by Hydro, constitute Approved Funds.

"TPC's Loan Units" means, on any particular day, all of TPC's Units on that day that are not TPC's Cash Units.

"TPC's Own Funds" means any funds that TPC will use to:

- (i) repay any principal amount outstanding under the Equity Credit Facility that Hydro has approved pursuant to a Credit Facility Repayment Certification (which, for greater certainty, does not include any other amount paid to Hydro under the Equity Credit Facility);

- (ii) make a payment to the Limited Partnership that Hydro has approved pursuant to a Limited Partnership Payment Certification; or

- (iii) make TPC's Cash Subscription Payment;

provided that the said funds have not been obtained by TPC (whether directly or indirectly through NCN, an NCN Business or the Taskinigahp Trust) from any arm's length Person, in any material way due to or as a result of:

- (A) TPC being the owner of one or more Units; or

- (B) TPC, NCN or Taskinigahp Trust providing or agreeing to provide, directly or indirectly, a Lien in favour of any other Person on, or by TPC, NCN or the Taskinigahp Trust conferring an ownership or proprietary interest or any kind upon any other Person, in any Property of TPC or the Property of Taskinigahp Trust (provided that this is not intended to prohibit or restrict the beneficial interest of the beneficiaries of the Taskinigahp Trust under the Trust Indenture constituting the Taskinigahp Trust), the Capital Stock of TPC, TPC's Units or any Distributions on the TPC's Units, or on any Corporate Distributions of TPC, including assignments or orders to pay.

For greater certainty, the mere investment of funds by NCN, an NCN Business or the Taskinigahp Trust in TPC for use by TPC in either repaying any principal amount under the Equity Credit Facility or making a payment to the Limited Partnership in the manner referenced above shall not preclude such funds from constituting TPC's Own Funds, and any funds so invested by NCN, an NCN Business or the Taskinigahp Trust in TPC shall be considered in all respects to be TPC's Own Funds for the purposes of this Agreement if Hydro determines that the funds otherwise fall

within the definition of TPC's Own Funds in accordance with the provisions of this Agreement (and, for this purpose, Hydro shall be entitled to look to the source of the funds to NCN, the NCN Business or the Taskinigahp Trust). Government Funds (once approved as such by Hydro pursuant to the approval processed hereunder) and funds obtained by TPC from Distributions on TPC's Units or from earnings on the investment of Distributions on TPC's Units which are voluntarily used to repay any principal amount (but no other amount) under the Equity Credit Facility or which are invested in the Limited Partnership pursuant to a Credit Facility Repayment Certification or a Limited Partnership Payment Certification respectively shall be deemed for the purposes of this Agreement to be TPC's Own Funds (but, for greater certainty, amounts paid to Hydro pursuant to the irrevocable assignment and direction of Distributions on TPC's Units under the Security Documents shall not count or be included as part of TPC's Own Funds).

"TPC's Third Party Funds" means any funds that TPC will use to either:

- (i) repay any principal amount under the Equity Credit Facility that Hydro has approved pursuant to a Credit Facility Repayment Certification (which for greater certainty does not include any other amount paid to Hydro under the Equity Credit Facility); or
- (ii) make a payment to the Limited Partnership that Hydro has approved pursuant to a Limited Partnership Payment Certification;

which are not TPC's Own Funds. For greater certainty:

- (A) the mere assignment of Dividends by NCN to the Taskinigahp Trust pursuant to the NCN Deed of Assignment shall not be deemed to constitute any of TPC's funds as being TPC's Third Party Funds hereunder;

- (B) merely because funds have been obtained by NCN from a third party, whether by loan, grant, subsidy or otherwise shall not be sufficient for such funds to be deemed to be TPC's Third Party Funds; and
- (C) none of NCN, any NCN Business or the Taskinigahp Trust shall be deemed to be a third party for the purposes of determining what funds are TPC's Own Funds and what funds are TPC's Third Party Funds, provided however, that where the source of any funds is any of NCN, an NCN Business or the Taskinigahp Trust, Hydro is entitled to look beyond such party to determine the ultimate source of such funds in applying the provisions hereof.

"TPC's Units" means, at any time, the Units owned by TPC.

"Taskinigahp Trust" has the meaning ascribed thereto in the PDA.

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

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

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

“Term Sale Conditions” means:

- (i) TPC is the registered owner and sole beneficial owner of and has good and marketable title to and is lawfully possessed of the Term Sale Units free and clear of all Liens except the Permitted Liens and such other Liens as Hydro, on the Sale Closing Date, may in its unfettered discretion accept in writing;
- (ii) TPC has the full right to sell and transfer the Term Sale Units to Hydro;
- (iii) no person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding, commitment or right for the purchase from TPC of the Term Sale Units other than Hydro; and
- (iv) the consummation of the transactions contemplated by the exercise of the Term Sale Right will not result in the creation or imposition of any Lien on the Term Sale Units (other than such other Liens as Hydro, on the Sale Closing Date, may in its unfettered discretion accept in writing).

“Term Sale Right” has the meaning specified in Section 5.1(c).

“Term Sale Units” has the meaning specified in Section 5.1(c).

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

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

“Total Outstandings” means the aggregate amount in Canadian Dollars of all outstanding Advances at any time under the Equity Credit Facility but does not include any interest, costs, expenses or indemnity claim arising under the Equity Credit Facility.

“Twenty-Fifth Anniversary Sale Conditions” means:

- (i) NCN owning beneficially on a fully diluted basis 100% of the Capital Stock of TPC free and clear of all Liens except Permitted Liens (and the unfettered right to direct the exercise of voting rights in respect thereto in accordance with the provisions of a bare trustee declaration pursuant to which the Chief or a Councillor of NCN, as the registered owner of 100% of the Capital Stock of TPC as bare trustee for NCN, commits to vote such Capital Stock in accordance with the directions of the Chief and Council of NCN);

- (ii) TPC is the registered owner and sole beneficial owner of and has good and marketable title to and is lawfully possessed of the Twenty-Fifth Anniversary Sale Units free and clear of all Liens except the Permitted Liens and such other Liens as Hydro, on the Sale Closing Date, may in its unfettered discretion accept in writing, and TPC has the full right to sell and transfer the Twenty-Fifth Anniversary Sale Units to Hydro;
- (iii) no person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding, commitment or right for the purchase from TPC of the Twenty-Fifth Anniversary Sale Units other than Hydro;
- (iv) no Person has any written or oral agreement, option, understanding or commitment or any right capable of becoming any agreement, option, understanding, commitment or right for purchase of any of the Capital Stock of TPC; and
- (v) the consummation of the transactions contemplated by the exercise of the Twenty-Fifth Anniversary Sale Right will not result in the creation or imposition of any Lien on the Twenty-Fifth Anniversary Sale Units (other than such other Liens as Hydro, on the Sale Closing Date, may accept in writing in its unfettered discretion).

“**Twenty-Fifth Anniversary Sale Right**” has the meaning specified in Section 5.1(a).

“**Twenty-Fifth Anniversary Sale Units**” has the meaning specified in Section 5.1(a).

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

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

1.2 Interpretation.

This Agreement shall be interpreted in accordance with the following:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) headings are inserted for convenience only and shall not affect the interpretation of this Agreement, any other Loan Documents or any provisions hereof or thereof;
- (c) references to dollars, unless otherwise specifically indicated, shall be references to Canadian Dollars;
- (d) the word “including” shall mean “including without limitation” and “includes” shall mean “includes without limitation”;
- (e) the expressions “the aggregate”, “the total”, “the sum” and expressions of similar meaning shall mean “the aggregate (or total or sum) without duplication”;

- (f) in the computation of periods of time, unless otherwise expressly provided, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”;
 - (g) accounting terms not specifically defined shall be construed in accordance with GAAP. Except as otherwise mandated by changes in GAAP from time to time, the financial statements required to be delivered pursuant to this Agreement shall be prepared, and all calculations made for the purposes of this Agreement shall be made, unless otherwise provided for herein, by the application of GAAP applied on a basis consistent with the most recent audited financial statements of TPC, previously delivered to Hydro; and
 - (h) for the purposes of this Agreement, a Person (the “**first Person**”) shall be deemed to be “**Controlled**” by another Person or Persons if the Capital Stock of the first Person directly or indirectly held by or for the benefit of the other Person or Persons, acting in concert, other than by way of security only, is either:
 - (i) more than 50% of the Capital Stock of the first Person outstanding at the time of such determination; or
 - (ii) sufficient to permit the other Person or Persons to replace or elect the majority of the board of directors of the first Person;
- and “**Control**” and “**Controlling**” shall have corresponding meanings.

1.3 Interpretation of any other Loan Documents.

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

1.4 Severability.

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

1.5 Entire Agreement.

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

1.6 Waiver.

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

1.7 Governing Law.

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

1.8 **Incorporation of Schedules.**

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

Schedule A	Repayment Notice
Schedule B	Intentionally Deleted
Schedule C	Issued and Outstanding Capital Stock and Debt
Schedule D	Material Agreements
Schedule E	Liabilities
Schedule F	Address for Notice
Schedule G	List of Security Documents
Schedule H	Authorizations - Hydro

It is acknowledged by Hydro that Schedules C to E (both inclusive) were delivered by TPC to Hydro on or before the Initial Closing Date for attachment to the Initial TPC Financing Agreement, which said Schedules shall be deemed to form part of this Agreement.

1.9 **Conflicts.**

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

ARTICLE II
EQUITY CREDIT FACILITY

2.1 **Equity Credit Facility.**

Hydro made, on the terms and conditions of the Initial Agreement, ninety-two million three hundred sixty-two thousand (\$92,362,000) dollars in advances to TPC pursuant to the Equity Credit Facility to October 14, 2014, exclusive of accrued interest. The terms of this Agreement shall govern the financing and repayment of the Equity Credit Facility and accrued interest as of the Final Investment Date.

2.2 **Non-Revolver Facility**

The Equity Credit Facility is a non-revolving credit facility and the principal amount of any Advance that is repaid may not be re-borrowed and shall be a permanent reduction of the Equity Credit Facility Commitment.

2.3 **Repayment on the Maturity Date.**

Subject to Hydro making an early demand for payment pursuant to Section 12.1 following an Event of Default, TPC shall repay on the Maturity Date, the Total Outstandings, if any, under the Equity Credit Facility and all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Equity Credit Facility, and the Total Outstandings, if any, under the Equity Credit Facility and all accrued and unpaid interest thereon and all other amounts owing to Hydro under the Equity Credit Facility shall become due and payable on the Maturity Date. It is acknowledged that Hydro shall have no right to sue TPC on the personal covenant to pay any of the said amounts and that Hydro's sole recourse for payment shall be to the Collateral in accordance with the provisions of the Loan Documents.

2.4 Balances as at Final Closing and TPC Payments.

The Parties agree and acknowledge that, at the Time of Final Investment Closing, TPC shall comply with each of the following conditions: ;

- (a) TPC's Invested Cash is twenty-one million, one hundred and seventy-eight thousand (\$21,178,000.00) dollars, exclusive of accrued interest;
- (b) The Total Outstandings under the Equity Credit Facility is eight-seven million six hundred twelve thousand dollars (\$87,612,000.00); and
- (c) In addition to all other mandatory payment obligations provided for in this Agreement and subject to TPC's right to make prepayments in accordance with the provisions of this Agreement, TPC shall throughout the term of this Agreement repay to Hydro all outstanding Advances under the Equity Credit Facility and accrued and unpaid interest thereon and all other amounts owing to Hydro under the Equity Credit Facility solely through Hydro receiving all Distributions from time to time on TPC's Loan Units. The Distributions on TPC's Loan Units shall be applied as follows: first, in payment of all costs and expenses owing to Hydro in connection with the Equity Credit Facility; second, in payment of all accrued and unpaid interest under the Equity Credit Facility (except as dealt with under subsection (2) above); and third, in repayment of all principal amounts that have not been repaid under the Equity Credit Facility (except as dealt with under subsection (2) above). (For greater certainty, any of the said amounts owing under the Equity Credit Facility on the Maturity Date shall be required to be repaid on the Maturity Date in accordance with Section 2.5). Such Distributions shall be paid to Hydro pursuant to TPC's irrevocable assignment and direction of all such Distributions to Hydro as provided for under the Security Documents until the Total Outstandings under the Equity Credit Facility and any accrued and unpaid interest thereon and all other amounts owing to Hydro under the Equity

Credit Facility have been repaid in full. It is acknowledged that Hydro shall have no right to sue TPC on the personal covenant to pay any of the said amounts and that Hydro's sole recourse for payment shall be to the Collateral in accordance with the provisions of the Loan Documents. The amount of any repayment shall be a permanent reduction of the Equity Credit Facility Commitment.

2.5 Optional Reductions.

TPC may subject to the provisions of this Agreement, including Sections 4.5 and 4.6 as adjusted for the applicable Market Make-whole Payment in accordance with Section 13.11, prepay, in whole or in part, only with Approved Funds, the Total Outstandings under the Equity Credit Facility, at any time, without penalty as long as each partial prepayment made by TPC under the Equity Credit Facility shall be in a minimum aggregate principal amount of \$200,000 and in an integral multiple of \$100,000.

ARTICLE III

PRIORITY OF DISTRIBUTION PAYMENTS

3.1 [intentionally blank]

3.2 [intentionally blank]

3.3 [intentionally blank]

3.4 [intentionally blank]

3.5 [intentionally blank]

3.6 [intentionally blank]

3.7 **Priority of Distribution Payments Prior to Maturity Date.**

Hydro shall apply all payment of Distributions on TPC's Units prior to Maturity Date on as follows:

- (a) first, to the payments to be made to Hydro pursuant to the provisions of the Revenue Advance Consolidation Agreement (and the security provided to Hydro pursuant to the provisions of that agreement in respect of the Distributions on TPC's Units), which shall have priority over any payments to be made out of Distributions on TPC's Units and the security provided to Hydro pursuant to the provisions of this Agreement, and accordingly, any such payments to Hydro pursuant to the provisions of the Revenue Advance Consolidation Agreement shall not constitute an Event of Default hereunder;
- (b) second, to the payments to be made to Hydro pursuant to Section 2.5(1) of the NCN Financing Agreement (and the security provided to Hydro pursuant to the provisions of that agreement in respect of the Distributions on TPC's Units), and, accordingly, any such payments to Hydro pursuant to the NCN Financing Agreement shall not constitute an Event of Default;
- (c) third, to the payments to be made to Hydro pursuant to Section 2.5(2) of the NCN Financing Agreement and the security provided to Hydro pursuant to the provisions of that agreement in respect of the Distributions on TPC's Units, and any such

payments to Hydro pursuant to the NCN Financing Agreement shall not constitute an Event of Default under this Agreement; and

- (d) fourth to payments to be made to Hydro pursuant to Section 2.4 (c).

3.8 Priority of Distributions Payments on Maturity Date.

The priority for payments made to Hydro through Distributions on TPC's Units commencing on the Maturity Date shall be as follows:

- (a) first, to the payments to be made to Hydro pursuant to the provisions of the Revenue Advance Consolidation Agreement (and the security provided to Hydro pursuant to the provisions of that agreement in respect of the Distributions on TPC's Units), which shall have priority over any payments to be made out of Distributions on TPC's Units after the Maturity Date (and the security provided to Hydro pursuant to the provisions of this Agreement) and accordingly, any such payments to Hydro pursuant to the provisions of the Revenue Advance Consolidation Agreement shall not constitute an Event of Default hereunder;
- (b) second, to the payments to be made to Hydro pursuant to the provisions of the NCN Financing Agreement (and the security provided to Hydro pursuant to the provisions of that Agreement in respect of Distributions on TPC's Units); and
- (c) for so long as no Event of Default has occurred that remains outstanding and uncured, and provided that Distributions on TPC's Units are applied in accordance with Section 3.8 (a) prior to the Maturity Date, and in accordance with Section 3.8(b) after the Maturity Date, pursuant to the irrevocable assignment and direction of the Distributions on TPC's Units to Hydro under the Security Documents as and when such Distributions are paid by the Limited Partnership (in the discretion of the General Partner), TPC shall have no other

payment obligation under the Equity Credit Facility or in respect of any amounts (whether principal, interest, costs or otherwise) due thereunder (except at Maturity Date in respect of such amounts as are stated to be due and payable on the Maturity Date).

ARTICLE IV LOAN ADVANCES

4.1 Interest on Equity Credit Advances.

Subject to Section 13.3, each Equity Credit Advance, or the amount remaining outstanding from time to time, shall bear interest calculated and payable in the following manner:

Any Equity Credit Advance forwarded to the Limited Partnership Account for the credit of TPC on or before October 14, 2014 shall:

- (i) until the Final Closing Date bear interest at a variable rate (expressed as a percentage rate per annum) equal to the Canadian Dollar Floating Rate in effect from time to time, plus one (1%) percent per annum compounded monthly (not in advance), calculated (but not compounded) daily and shall accrue interest at that rate until the Final Closing Date. Hydro shall provide TPC with notice of the Canadian Dollar Floating Rate applicable to each such Equity Credit Advance, and its supporting calculations therefore, which shall constitute, in the absence of error, prima facie evidence of the Canadian Dollar Floating Rate applicable to each such Advance;
- (ii) from and after the Final Closing Date to and until March 31, 2014, the Total Outstandings under the Equity Credit Facility, plus all accrued and unpaid interest thereon, and all other amounts owing to Hydro under the Equity

Credit Facility as at the Final Closing Date shall bear interest at a fixed interest rate of six and three hundred seventy-six one thousands (6.376%) percent calculated and compounded semi-annually (not in advance). Hydro shall provide TPC with notice of the Canadian Thirty Year Rate applicable to the amount of the Equity Credit Advances then outstanding and all accrued and unpaid interest thereon and all other amounts owing to Hydro in respect thereto, and its supporting calculations therefore, which shall constitute, in the absence of error, prima facie evidence of the applicable Canadian Thirty Year Rate;

- (iii) from and after April 1, 2014, the Total Outstandings under the Equity Credit Facility, plus all accrued and unpaid interest thereon, and all other amounts owing to Hydro under the Equity Credit Facility shall bear interest at a fixed interest rate of five and three hundred seventy-six one thousandth (5.376%) percent calculated and compounded semi-annually (not in advance);

Interest on any Equity Credit Advance made after April 1, 2014 shall accrue in the current month and added to the Total Outstandings for the purposes of the interest calculations in Section 13.3(a) (ii).

Hydro shall provide TPC with notice of the interest rate applicable to the amount of the Equity Credit Advances then outstanding, and all accrued and unpaid interest thereon and all other amounts owing to Hydro in respect thereto and its supporting calculations therefor; and

- (iv) subject to the provisions of this Agreement (including payments made through Distributions under Article II and TPC's right to make prepayments in accordance with the provisions of this Agreement), the accrued interest,

and all other amounts owing to Hydro under the Equity Credit Facility, shall only become due and payable on the Maturity Date.

Any Equity Credit Advance forwarded to the Limited Partnership Account for the credit of TPC after the Final Closing Date and prior to the first Anniversary Date shall, from the date of the Advance until March 31, 2014, bear interest at the interest rate established pursuant to Section 4.1(a) (ii) and, from and after April 1, 2014, bear interest at the interest rate established pursuant to Section 4.1(a) (iii), the provisions of which shall apply, *mutatis mutandis*, to such Advances and, subject to the provisions of this Agreement (including payments made through Distributions under Article II and TPC's right to make prepayments in accordance with the provisions of this Agreement), the accrued interest, and all other amounts owing to Hydro under the Equity Credit Facility, shall only become due and payable on the Maturity Date.

4.2 Repayment Notice.

Mandatory repayments pursuant to Sections 2.6(3) and (4) and optional repayment to reduce the Total Outstandings under the Equity Credit Facility pursuant to Sections 2.7 and/or 3.7 shall be made upon at least seven (7) Business Days' notice (but not more than twenty (20) Business Days' notice) to Hydro (each such notice a "**Repayment Notice**"). As a condition of any Repayment Notice and the payments being made to Hydro, TPC shall deliver to Hydro, at least thirty (30) calendar days prior to the proposed date that TPC intends to make the repayment, a statutory declaration signed by a duly authorized officer of TPC (each such statutory declaration a "**Credit Facility Repayment Certification**") which shall:

- (a) certify the source of the money to be used for the proposed repayment;
- (b) disclose all material information relating to the money to be used for the proposed repayment;

(c) attach true and complete copies of all material documents; and

(d) a copy of the proposed Repayment Notice in the form of Schedule A to this Agreement, specifying: (A) the proposed date of such repayment; and (B) the aggregate principal amount of the proposed repayment. Hydro shall have the right to request from TPC, within five (5) calendar days of receipt of the Credit Facility Repayment Certification, such additional information and notarized copies of documents relating to the monies to be used in respect of the proposed repayment as it may require, acting reasonably, and to receive such written consents and waivers from TPC to obtain additional information and documents from any other Person relating to the monies to be used in respect of the proposed repayment as Hydro may request, acting reasonably. Hydro shall be required to confirm in writing within twenty (20) calendar days of receipt of the Credit Facility Repayment Certification whether or not it will accept the Credit Facility Repayment Certification, unless the time period is extended by Hydro, acting reasonably, due to Hydro awaiting receipt of the additional information and documents as it may have requested in connection with the Credit Facility Repayment Certification.

4.3 Hydro Acceptance of Repayment Notice.

If Hydro accepts the Credit Facility Repayment Certification, TPC may issue to Hydro the Repayment Notice in the form attached to the Credit Facility Repayment Certification, and TPC shall:

(a) pay Hydro the repayment amount set out in the Repayment Notice; and

(b) provide with the said payment, a statutory declaration signed by a duly authorized officer of TPC certifying there has been no material change to any of the information or

documents provided by TPC in the Credit Facility Repayment Certification concerning the monies being paid to Hydro, including the source of the monies; and

(c) pay to Hydro all accrued interest on the Credit Facility in respect of which the repayment is being made, to the date of such repayment.

For greater certainty, any principal amount repaid pursuant to the Repayment Notice are Approved Funds and form part of TPC's Invested Cash but does not include any amount on account of the payment of accrued interest on the Equity Credit Facility). Hydro shall be required to accept the Credit Facility Repayment Certification if Hydro determines, acting reasonably, that the monies being used for the repayment fall within the definition of TPC's Own Funds based on Hydro's analysis of the information disclosed and documents provided or otherwise obtained by Hydro.

4.4 Hydro's Rejection of Funds.

If Hydro, acting reasonably, based on its analysis, determines that the monies fall within the definition of TPC's Third Party Funds, then Hydro is entitled, to either reject or accept the Credit Facility Repayment Certification. In making that determination, Hydro will consider the source of the monies, the terms of any financing, any repayment requirements associated with the monies that have been provided, whether or not any Person has recourse against TPC's Units in the event of default in respect of any financing associated with obtaining the monies and, if so, the likelihood of that right being exercised. If Hydro rejects the Credit Facility Repayment Certification, TPC shall not be entitled to proceed with the proposed repayment.

4.5 Hydro Acceptance of Certification.

If Hydro accepts the Credit Facility Repayment Certification, the payment can be made and the funds will be Approved Funds and once the payment is made, it shall form part of TPC's Invested Cash. For greater certainty, any funds used by TPC from time to time to pay any interest, costs,

expenses or indemnity claims properly due to Hydro hereunder having regard for Section 5.14 of the PDA, shall not require certification or approval hereunder as Approved Funds.

4.6 Evidence of Debt

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

4.7 Determination of Interest and Fees

For purposes of the *Interest Act* (Canada):

- (a) whenever any interest under this Agreement is calculated using a rate based on a period of time other than a calendar year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on such period of time multiplied by (y) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (z) the number of days in such period of time;
- (b) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; and

- (c) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

4.8 Hydro Obligations.

Within ten (10) Business Days of the last day of each month during this Agreement, Hydro shall provide to TPC a written statement the Total Outstandings under the Equity Credit Facility on the last day of each month, together with the following information:

- (a) opening and closing balances;
- (b) principal repaid during the month;
- (c) interest paid or payable by TPC, (together with the date(s) of any change(s) from floating rate(s) to fixed rate(s) charged on such Advances pursuant to the terms of this Agreement), during the month; and
- (d) any costs charged by Hydro to TPC during the month, and any reimbursements made by TPC to Hydro during the month for costs charged by Hydro to TPC.

ARTICLE V

OPTIONS TO SELL TPC'S UNITS

5.1 TPC's Options To Sell.

The Parties acknowledge neither the Final Closing Sale Right or the Non-Completion Sale Right referenced in the Initial TPC Financing Agreement were exercised but this shall not preclude TPC from exercising the Term Sale Right, the Twenty-Fifth Anniversary Sale Right or the Maturity

Sale Right, in respect of any of TPC's Units still owned by TPC, which shall have the following rights:

- (a) on the twenty-fifth Anniversary Date, a one time right, conditional only on TPC being in compliance with all of the Twenty-Fifth Anniversary Sale Conditions (the "**Twenty-Fifth Anniversary Sale Right**") to sell only to Hydro, all of TPC's Units (but not less than all of TPC's Units) owned by TPC on the twenty-fifth Anniversary Date (the "**Twenty-Fifth Anniversary Sale Units**"), and upon the exercise of such right, Hydro shall purchase all, and not less than all, of the Twenty-Fifty Anniversary Sale Units from TPC in accordance with and subject to the provisions of this Agreement;
- (b) on the Maturity Date, a one time right, conditional only on TPC being in compliance with all of the Maturity Sale Conditions (the "**Maturity Sale Right**") to sell only to Hydro, all of TPC's Units (but not less than all of TPC's Units) owned by TPC on the Maturity Date (the "**Maturity Sale Units**"), and upon the exercise of such right, Hydro shall purchase all, and not less than all, of the Maturity Sale Units from TPC in accordance with and subject to the provisions of this Agreement; and
- (c) at any time on or prior to the Maturity Date, a one-time right, conditional only on TPC being in compliance with the Term Sale Conditions, (the "**Term Sale Right**") to sell only to Hydro, all of TPC's Units (but not less than all of TPC's Units) owned by TPC on the date of exercise of such right (the "**Term Sale Units**"), and upon any exercise of such right, Hydro shall purchase all, and not less than all, of the Term Sale Units from TPC in accordance with the provisions of this Agreement.

Provided the Twenty-Fifth Anniversary Sale Right, Maturity Sale Right or Term Sale Right is exercised by TPC in the manner set out in this Agreement, and subject only to TPC's compliance

with the Final Closing Sale Conditions, Non-Completion Sale Conditions, Twenty-Fifth Anniversary Sale Conditions, Maturity Sale Conditions, or Term Sale Conditions, as applicable, Hydro shall purchase all of the Twenty-Fifth Anniversary Sale Units, Maturity Sale Units or Term Sale Units, as applicable, in accordance with and subject to the terms of this Agreement.

5.2 Purchase Price 25th Anniversary Sale

The purchase price for the Twenty-Fifth Anniversary Sale Units which are sold to and purchased by, Hydro pursuant to the exercise by TPC of the Twenty-Fifth Anniversary Sale Right shall be an amount equal to the sum of (A) and (B), where (A) is the aggregate of the Total Outstandings under the Equity Credit Facility, the Total Outstandings defined under the NCN Financing Agreement and all accrued and unpaid interest, costs and other amounts owing by TPC or NCN to Hydro under this Agreement, the NCN Financing Agreement and the Loan Documents pursuant to each agreement, as of the twenty fifth Anniversary Date, and (B) is TPC's Invested Cash as at the twenty fifth Anniversary Date. The purchase price as so determined shall be paid in full by Hydro as follows:

- (a) by Hydro accepting the Twenty-Fifth Anniversary Sale Units in full and final satisfaction of the Total Outstandings due to Hydro under the Equity Credit Facility hereunder and under the Dividend Credit Facility (as defined under the NCN Financing Agreement), and of all accrued and unpaid interest, costs and other amounts whatsoever owing by TPC or NCN to Hydro under this Agreement, the NCN Financing Agreement and the Loan Documents pursuant hereto and thereto, as of the twenty fifth Anniversary Date, and by Hydro fully and finally releasing and discharging TPC and NCN for all of the Obligations due to Hydro under this Agreement, the NCN Financing Agreement (the Obligations thereunder being as defined therein) and all Loan Documents hereunder and thereunder; and

- (b) by Hydro paying to TPC on the effective date of the sale of the Twenty-Fifth Anniversary Sale Units, an amount in immediately available funds equal to TPC's Invested Cash, without interest, in accordance with Article VII; and the repayment effected thereby shall terminate the Equity Credit Facilities and the Dividend Credit Facility.

5.3 Purchase Price Maturity Date.

The purchase price for the Maturity Sale Units which are sold to and purchased by, Hydro pursuant to the exercise by TPC of the Maturity Sale Right shall be an amount equal to the sum of (A) and (B), where (A) is the aggregate of the Total Outstandings under the Equity Credit Facility, the Total Outstandings defined under the NCN Financing Agreement and all accrued and unpaid interest, costs and other amounts owing by TPC or NCN to Hydro under this Agreement, the NCN Financing Agreement and the Loan Documents pursuant to each agreement, as of the Maturity Date, and (B) is TPC's Invested Cash. The purchase price as so determined shall be paid in full by Hydro as follows:

- (a) by Hydro accepting the Maturity Sale Units in full and final satisfaction of the Total Outstandings due to Hydro under the Equity Credit Facility and the Dividend Credit Facility, and of all accrued and unpaid interest, costs and other amounts whatsoever owing by TPC or NCN to Hydro under this Agreement, the NCN Financing Agreement and the Loan Documents pursuant to each agreement as of the Maturity Date, and by Hydro fully and finally releasing and discharging TPC and NCN for all of the Obligations due to Hydro under this Agreement, the NCN Financing Agreement (the Obligations thereunder being as defined therein) and all Loan Documents under each agreement; and
- (b) by Hydro paying to TPC on the effective date of the sale of the Maturity Sale Units, an amount in immediately available funds equal to TPC's Invested Cash, without

interest, in accordance with Article VII; and the repayment effected thereby shall terminate the Equity Credit Facility and the Dividend Credit Facility (as defined under the NCN Financing Agreement).

5.4 Purchase Price Term Sale.

The purchase price for the Term Sale Units which are sold to, and purchased by, Hydro, pursuant to the exercise by TPC of the Term Sale Right shall be an amount equal to the aggregate of the Total Outstandings under the Credit Facilities, the Total Outstandings defined under the NCN Financing Agreement and all accrued and unpaid interest, costs and other amounts whatsoever owing by TPC or NCN to Hydro under this Agreement, the NCN Financing Agreement and the Loan Documents pursuant hereto and thereto, as of the effective date of the sale pursuant to the exercise by TPC of the Term Sale Right. The purchase price as so determined shall be paid in full by Hydro accepting the Term Sale Units in full and final satisfaction of the Total Outstandings due to Hydro under the Equity Credit Facility and the Dividend Credit Facility and of all accrued and unpaid interest, costs and other amounts whatsoever owing by TPC or NCN to Hydro under this Agreement, the NCN Financing Agreement and the Loan Documents pursuant to each agreement, as of the effective date of the sale pursuant to the exercise by TPC of the Term Sale Right, the NCN Financing Agreement (the Obligations thereunder being as defined therein) and all Loan Documents pursuant to each agreement and the repayment shall terminate the Equity Credit Facility and the Dividend Credit Facility.

5.5 Exercise of TPC's Sale Rights and Hydro's Notice Covenant.

The Twenty Fifth Anniversary Sale Right and the Term Sale may only be exercised by giving notice to Hydro in the manner set out in Section 5.4 (a "Notice of Sale"). Hydro agrees to provide to TPC not less than forty five (45) calendar days, nor more than ninety (90) calendar days, prior written notice of the Twenty-Fifth Anniversary Date or the Maturity Sale Date, as applicable, which notice shall include the following information:

(a) Hydro's calculation of the number of TPC's Units that are TPC's Loan Units and the number that are TPC's Cash Units as of the date of the notice (together with its supporting calculations); and

(b) the Total Outstandings owing under the Equity Credit Facility, and the amount of any accrued interest and costs that is owing to Hydro, as of the notice date (having regard in respect of costs to Section 12.2).

5.6 Contents of a Notice of Sale.

A Notice of Sale shall only be effective if:

- (a) it is executed by TPC and it indicates the number of TPC's Units in respect of which TPC is exercising its right to sell and, if the number of TPC's Units in respect of which its right to sell is being exercised is not specified in the Notice of Sale, TPC shall be deemed to be exercising its right to sell to Hydro all of TPC's Units;
- (b) for the exercise of the Twenty-Fifth Anniversary Sale Right, it is delivered to Hydro at least twenty (20) calendar days (but not more than forty (40) calendar days) prior to the Twenty-Fifth Anniversary Date, together with a statement from TPC:
 - (i) confirming TPC has elected to sell the Twenty-Fifth Anniversary Sale Units pursuant to the Twenty-Fifth Anniversary Sale Right; and
 - (ii) representing and warranting that each of the Twenty-Fifth Anniversary Sale Conditions is true and correct in all material respects on that date and will be true and correct in all material respects on the Sale Closing Date;

which statements shall be certified as true and correct in all material respects by a duly authorized officer of TPC for and on behalf of TPC;

- (c) for the exercise of the Maturity Sale Right, it is delivered to Hydro at least twenty (20) calendar days (but not more than forty (40) calendar days) prior to the Maturity Date, together with a statement from TPC:
 - (ii) confirming TPC has elected to sell the Maturity Sale Units pursuant to the Maturity Sale Right; and
 - (iii) representing and warranting that each of the Maturity Sale Conditions is true and correct in all material respects on that date and will be true and correct in all material respects on the Sale Closing Date;

which statements shall be certified as true and correct in all material respects by a duly authorized officer of TPC for and on behalf of TPC;

- (d) for the exercise of the Term Sale Right, it is delivered to Hydro at least twenty (20) calendar days (but not more than forty (40) calendar days) prior to the proposed effective date of the sale of the Term Sale Units pursuant to the exercise of the Term Sale Right, together with a statement from TPC:
 - (i) confirming TPC has elected to sell the Term Sale Units pursuant to the Term Sale Right; and
 - (ii) representing and warranting that each of the Term Sale Conditions is true and correct in all material respects on that date and will be true and correct in all material respects on the Sale Closing Date;

which statements shall be certified as true and correct in all material respects by a duly authorized officer of TPC for and on behalf of TPC.

5.7 Effect of the Notice of Sale and Closing Arrangements.

If a Notice of Sale is sent to Hydro in compliance with Section 5.4, then:

- (a) TPC shall be obligated to sell the applicable Sale Units to Hydro at the purchase price and in the manner determined in accordance with Section 5.2;
- (b) Hydro shall be obligated to purchase the applicable Sale Units from TPC at the purchase price and in the manner determined in accordance with Section 5.2; and
- (c) such Sale shall be completed on the date, at the place and in the manner determined in accordance with the provisions of Article VII.

ARTICLE VI

[Intentionally deleted]

ARTICLE VII

GENERAL TERMS AND CONDITIONS APPLICABLE TO ANY SALE

7.1 Application and Terms and Condition.

The following provisions of this Article VII shall apply to any Sale pursuant to Article V of this Agreement:

(1) Closing Date and Sale.

The Sale shall be completed on the date and at the place determined in accordance with the provisions of this Article VII:

(a) the Sale shall be completed:

(i) on the twenty-fifth Anniversary Date if the Sale is pursuant to the exercise of the Twenty-Fifth Anniversary Sale Right;

(ii) the Maturity Date if the Sale is pursuant to the exercise of the Maturity Date Sale Right;

(iii) on the date that is twenty-eight (28) calendar days after the Notice of Sale is issued if the Sale is pursuant to the exercise of the Term Sale Right;

as the case may be, provided, however, that the said Sale may occur on such other date that the parties may mutually agree upon (the “**Sale Closing Date**”); and

(b) the place for the completion of the Sale shall be the head office of Hydro in connection with the Sale or if applicable the law office of the external legal counsel of Hydro or such other place as the parties may mutually agree upon.

(2) Sale Closing Arrangements.

At or before the Sale Closing Date, TPC shall deliver the following to Hydro subject to Hydro complying with all required conditions on Hydro as set out in this Article VII, including payment to TPC in full of the purchase price for the Sale Units or:

- (a) one or more certificates representing in the aggregate the Sale Units, duly endorsed in blank for transfer to Hydro (the “**Sale Certificate(s)**”) or power of attorney appointing Hydro as attorney of TPC to transfer the Sale Units to Hydro, provided that where the number of Units represented by the Sale Certificate(s) exceed the number of Sale Units the transfer of the Sale Units to Hydro shall be conditional upon Hydro’s receipt from the Limited Partnership of a replacement certificate, (unless the Equity Credit Facility under this Agreement have been terminated and the Dividend Credit Facility, as that term is defined under the NCN Financing Agreement, has been terminated and there are no outstanding Obligations under this Agreement or under the NCN Financing Agreement, as defined under that agreement, in which event the said certificate shall be forwarded to TPC), confirming TPC’s ownership of that number of Units which is in excess of the number of Sale Units. Hydro is authorized to retain the replacement certificate(s) for such period of time as there are any outstanding Obligations under this Agreement or under the NCN Financing Agreement (as defined under that agreement) and Hydro agrees to provide copies to TPC of all of the said certificates, together with confirmation in writing that it is holding the originals of the said certificates immediately upon receipt thereof;

- (b) such other documents as Hydro may reasonably require to entitle Hydro to require the General Partner to register the transfer of such Sale Units to Hydro and to entitle Hydro to become the registered holder of such Sale Units on the books of the Limited Partnership, free and clear of all Liens except the Permitted Liens (the particulars of which have been identified in writing to Hydro to the extent that TPC is aware of the existence of such Permitted Liens) and such other Liens as at the Sale Closing Date as Hydro may, in its unfettered discretion, accept in writing;

- (c) a certificate bearing the date on which the Sale Closing Date occurs wherein TPC certifies in respect of the Sale Units as being true and correct, each of the Term Sale Conditions, the Twenty-Fifth Anniversary Sale Conditions, or the Maturity Sale Conditions, as applicable, as at the Sale Closing Date; and
- (d) a certificate bearing the closing date wherein TPC certifies, as being true, as at the Sale Closing Date a statement to the effect that on such date TPC is resident in Canada for the purposes of the *Income Tax Act*.

(3) Title and other TPC Covenants.

At the Sale Closing Date, TPC shall transfer and deliver to Hydro good and marketable title to such Sale Units free and clear of all Liens except for the Permitted Liens (the particulars of which have been identified in writing to Hydro to the extent that TPC is aware of the existence of such Permitted Liens) and any -other Liens that Hydro, in its unfettered discretion, agrees in writing at the Sale Closing Date that the Sale may be subject to.

(4) Satisfaction of Purchase Price.

At the Sale Closing Date, Hydro shall satisfy the purchase price for the Sale Units to be purchased from TPC in the manner provided for in this Agreement, and in the event that the Sale Units constitute all of TPC's Units, Hydro shall arrange for discharge of all registrations in public registries made against TPC and/or NCN under the Security Documents pursuant to this Agreement and under the Security Documents pursuant to the NCN Financing Agreement (and the original Guarantee, as defined under the NCN Financing Agreement, shall be returned to TPC for cancellation).

7.2 Conditions to the Obligations of Hydro.

Notwithstanding anything in this Agreement, , the obligations of Hydro to complete the Sale of the Sale Units , shall, until the Sale has been completed, be subject to the fulfillment of the following conditions and TPC covenants and agrees to perform and comply with each and every one of such conditions insofar as such conditions relate to matters within the control of TPC:

- (1) all terms, covenants, agreements and conditions of this Agreement which are to be complied with or performed by TPC at or before the Sale Closing Date shall have been complied with and performed in all material respects in accordance with the terms of this Agreement prior to or at such time; and

- (2) at the Sale Closing Date, TPC shall, without limitation to all other obligations of TPC in respect of the Sale as set out in this Agreement execute and deliver to Hydro a certificate bearing the Sale Closing Date wherein a duly authorized officer of TPC shall certify as true, for and on behalf of TPC (and not in such officer's personal capacity), a statement to the effect that at such time the conditions set out in paragraph (1) above have been performed, complied with and fulfilled except as specifically disclosed in such certificate and the closing of the Sale shall not be effective unless and until Hydro accepts in writing any and all exceptions disclosed in such certificate.

The conditions applicable to a Sale of the Sale Units, contained in the provisions of this Section 7.2 are inserted for the exclusive benefit of Hydro and may be waived in whole or in part by Hydro at any time without prejudice to the right of Hydro to rely on all covenants and agreements and representations and warranties in this Agreement and all conditions contained in this Section 7.2, except to the extent that Hydro has in writing waived its right to rely on such covenants, agreements, representations, warranties or conditions. If any of the conditions applicable to a Sale

of the Sale contained in this Section 7.2 are not be fulfilled or complied with as herein provided, Hydro may, at its option:

- (a) terminate the obligations of TPC and Hydro in respect of the Sale of the Sale Units by notice in writing to TPC and in such event Hydro and TPC shall be released from all obligations hereunder in respect of the Sale of the Sale Units
- (b) defer the completion of the Sale of the Sale Units to a new closing date (not to exceed three (3) months after the original closing date except by agreement in writing of the parties) to determine if the aforesaid conditions can be fulfilled or complied with; or
- (c) bring an action for specific performance or any other remedy which may be available to Hydro.

7.3 Conditions to the Obligations of TPC.

Notwithstanding anything herein contained, the obligations of TPC to complete the Sale of the Sale Units shall, until the Sale has been completed, be subject to the fulfillment of the following conditions and Hydro covenants and agrees to perform and comply with each and every one of such conditions insofar as such conditions relate to matters within the control of Hydro:

- (1) all terms, covenants, agreements and conditions of this Agreement which are to be complied with or performed by Hydro at or before the Sale Closing Date shall have been complied with and performed in all material respects in accordance with the terms of this Agreement prior to or at such time; and
- (2) at the Sale Closing Date, Hydro shall, without limitation to all other obligations of Hydro in respect of the Sale as set out in this Agreement, execute and deliver to

TPC a certificate bearing the Sale Closing Date wherein a duly authorized officer of Hydro shall certify as true, for and on behalf of Hydro (and not in such officer's personal capacity), a statement to the effect that the conditions set out in paragraph (1) above have been performed, complied with and fulfilled except as specifically disclosed in such certificate (and the closing of the Sale shall not be effective unless and until TPC accepts in writing any and all exceptions disclosed in such certificate).

The conditions applicable to a Sale of the Sale Units contained in the foregoing provisions of this Section 7.3 are inserted for the exclusive benefit of TPC in respect of the Sale of the Sale Units and may be waived in whole or in part by TPC at any time without prejudice to the right of TPC to rely on all covenants and agreements and representations and warranties in this Agreement and all conditions contained in this Section 7.3 except to the extent that TPC has in writing waived its right to rely on such covenants, agreements, representations, warranties or conditions. If any of the conditions applicable to a Sale of the Sale Units and contained in this Section 7.3 shall not be fulfilled or complied with as herein provided, TPC may, at its option:

- (a) terminate the obligations of Hydro and TPC in respect of the sale of the Sale Units by notice in writing to Hydro and in such event TPC and Hydro shall be released from all obligations hereunder in respect of the Sale of the Sale Units;
- (b) defer the completion of the Sale of the Sale Units to a new closing date (not to exceed three (3) months after the original closing date except by agreement in writing of the parties, to determine if the aforesaid conditions can be fulfilled or complied with; or
- (c) bring an action for damages or specific performance or any other remedy which may be available to TPC.

7.4 Power of Attorney.

Subject to payment of the purchase price to TPC and subject to Section- 6.3 hereof, TPC hereby irrevocably nominates, constitutes and appoints Hydro, its attorney and agent, for, in the name of and on behalf of TPC to do all acts and things and sign all documents (other than any releases of Hydro, the General Partner or the Limited Partnership) which are necessary or desirable to complete the Sale of the Sale Units by TPC to perform, satisfy or discharge any obligations in relation to the Sale of the Sale Units or Purchased Units (as applicable) by TPC in connection with a Sale and, without limiting the foregoing, TPC acknowledges and agrees that Hydro is hereby granted authority to receive and accept delivery of and keep possession of, and to execute and deliver, in the name of and on behalf of TPC all such certificates, instruments and documents as may be necessary or desirable, (other than any releases of Hydro, the General Partner or the Limited Partnership) in the opinion of Hydro, acting reasonably, to complete any Sale of the Sale Units or to perform, satisfy or discharge any obligations in relation to a Sale of the Sale Units . TPC hereby acknowledges and agrees that the appointment hereby made and the powers hereby granted are coupled with an interest and are and shall be irrevocable and to the extent permitted by applicable Laws shall survive the dissolution, insolvency or bankruptcy of TPC and may be exercised by Hydro in its own name or in the name of TPC and shall survive any assignment or purported assignment of TPC's Units by TPC and to the extent permitted by applicable laws, shall be binding upon the successors and permitted assigns of TPC.

If Hydro, as attorney on behalf of TPC completes the Sale of the Sale Units Hydro shall be entitled to have any proceeds of the Sale, to which TPC would otherwise be entitled to receive, paid to legal counsel for Hydro (as designated by Hydro) to be held in trust for TPC, and to be retained by such legal counsel until TPC delivers to Hydro such documents as TPC is required to deliver under this Agreement to complete the Sale of the Sale Units. Promptly upon the receipt of such documents by Hydro, Hydro's legal counsel shall pay the applicable proceeds, and deliver any other applicable closing documents to which TPC is entitled, to TPC, together with such interest as legal counsel may have earned on such proceeds.

ARTICLE VIII

[Intentionally deleted.]

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties.

To induce Hydro to make Advances available under this Agreement, TPC represents and warrants to Hydro that each of the following representations and warranties is true and correct:

- (1) Status and Power. TPC is a corporation duly incorporated and organized and validly subsisting under the Laws of Manitoba and has full corporate power and capacity to own its property and carry on its Business. TPC is duly qualified, licenced or registered to carry on business in Manitoba.
- (2) Authorization. TPC has full power and capacity and full legal right to enter into and perform its obligation under this Agreement and each of the other Loan Documents to which it is or will be a party, and has or will have by the Initial Closing Date taken all action necessary to be taken by it to authorize such acts.
- (3) Enforceability of Agreement. This Agreement and any other Loan Document to which TPC is a party constitutes legal, valid and binding obligations of TPC enforceable against it in accordance with their respective terms, subject only to any limitation under applicable Laws relating to (a) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and (b) the discretion that

a court, or an arbitrator duly appointed under Article XXI of the PDA, may exercise in the granting of equitable remedies.

- (4) Government Approval and Regulation. No Authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or other Person (other than those that have been, or by the Initial Closing Date will be, duly obtained or made) is required for the due execution, delivery or performance by TPC of any Loan Document to which TPC is a party.
- (5) Litigation. There is no material action, suit or proceeding which has been commenced (Notice of which has been served on TPC), or to the best of the knowledge of TPC, pending or threatened against TPC before or by any Governmental Entity, or before any arbitrator or board, which would prevent TPC from performing its obligations under any of the Loan Documents to which it is a party. TPC is not in default with respect to any judgment, order, writ, injunction, decree, or award of any court, arbitrator, board or other Governmental Entity, nor is there any judgment, order, writ, injunction, decree, or award which would prevent TPC from performing its obligations under any of the Loan Documents to which it is a party.
- (6) Imposition of Lien. The consummation of the transactions hereby contemplated and the compliance with the terms, conditions and provisions of this Agreement and each of the other Loan Documents will not result in the creation or imposition of any Lien on any Property of TPC except as otherwise permitted by this Agreement.
- (7) No Other Material Facts. None of:
 - (a) this Agreement;

(b) any of the other Loan Documents; or

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

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

- (8) Restrictive Documents. TPC is not subject to, or a party to, any restriction in its constating documents or by-laws, any Notice, any Law, any Claim, any contract or instrument, any Lien, or any other restriction of any kind or character which would prevent the consummation of the transactions contemplated by this Agreement or any other Loan Documents or compliance by TPC with the terms, conditions and provisions hereof or thereof or the continuing operation of the Business.
- (9) Title to Property. TPC is the registered owner and sole beneficial owner of and has good and marketable title to and is lawfully possessed of its Property free and clear of all Liens, except Permitted Liens. TPC has full right to mortgage, pledge, charge and assign to Hydro the Collateral. No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding, commitment or right for the purchase from TPC of the Collateral other than Hydro.
- (10) Compliance with Laws. TPC is in material compliance with all applicable Laws.

- (11) No Breach of Contracts. Schedule D will be completed and provided by TPC to Hydro on or before the Initial Closing Date, and will, upon completion and delivery thereof, contain a complete and accurate list of all agreements to which TPC is a party in connection with the Corporate Distributions of TPC, the Capital Stock of TPC, the equity interest that NCN has in TPC, TPC's Units and Distributions on TPC's Units, and any other agreement to which TPC is a party creating liabilities or obligations upon any Person over the term of the agreement in excess of \$75,000, or is otherwise material to TPC (collectively, the "Material Agreements"). TPC has provided, or will on or before the Initial Closing Date provide, copies of all of the Material Agreements, including amendments, or additions thereto, to Hydro. On the date of execution of each of the Future Material Agreements (as defined below in Section 10.1(14)), Schedule D hereto shall be deemed to be amended to include such Future Material Agreements and such Future Material Agreements shall be deemed to be "Material Agreements" for the purposes of this Agreement from and after such execution date, without the necessity of any further action by any of the parties hereto. Each Material Agreement is, or will on or before Initial Closing Date be, in full force and effect, unamended (except as disclosed to Hydro), and there exists no default, or event, occurrence, condition or act (including the completion of the transactions contemplated in this Agreement and the other Loan Documents) which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become a default thereunder. TPC has not violated or breached, in any respect, any of the terms or conditions of any Material Agreements and, to the best of the knowledge of TPC, all the material covenants to be performed by any other party thereto have been performed in all material respects.
- (12) Books and Records. All books and records of TPC have been fully, properly and accurately kept and completed in accordance with GAAP and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.

- (13) Tax Liability. Except for any Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books:
- (a) TPC has in a timely manner filed all tax returns, elections, filings and reports with respect to Taxes required by Law to be filed by it and such returns, elections, filings and reports are true, complete and correct;
 - (b) TPC has paid, or reserved in its financial statements, all Taxes which are due and payable, and has paid all assessments and reassessments and all other Taxes, governmental charges penalties, interest and fines due and payable by it;
 - (c) TPC has no liability, contingent or otherwise, for Taxes, except Taxes not now due and payable with respect to ordinary operations during the current fiscal period adequate provision for the payment of which has been made; and
 - (d) TPC has paid as and when due all applicable Taxes and remitted as required by Law all applicable Taxes and deductions and any interest or penalties related thereto.
- (14) Shareholder. NCN is the beneficial owner of all of the Capital Stock of TPC free and clear of all Liens except Permitted Liens. The Capital Stock of TPC is owned by the Chief or a Councillor of NCN, as bare trustee for NCN. No Person has any written or oral agreement, option, understanding or commitment or any right capable of becoming any agreement, option, understanding, commitment, or right for purchase of any of the Capital Stock of TPC or to receive payment based on the value of any such Capital Stock. The issued and outstanding Capital Stock and Debt (excluding Debt under this Agreement) of TPC and the registered and beneficial holders of such Capital Stock and Debt (excluding Debt under this

Agreement) are, or will upon completion of delivery of Schedule C be, as described in Schedule C, which will be completed and provided by TPC to Hydro on or before the Initial Closing Date. Hydro acknowledges that the NCN Deed of Assignment shall not be deemed to be a breach of this representation.

- (15) Liabilities. TPC does not have any liabilities, whether accrued, absolute, contingent or otherwise, of any kind or nature whatsoever, except as otherwise disclosed in Schedule E, which will be completed and provided by TPC to Hydro on or before the Initial Closing Date or pursuant to the Loan Documents, and except incurred after the date hereof in compliance with this Agreement and the Loan Documents.
- (16) No Event of Default. No Event of Default has occurred, nor has any event or condition occurred which, with the giving of Notice or passage of time, or both, would constitute an Event of Default under the Loan Documents. No default has occurred not has any event or condition occurred which, with the giving of Notice or passage of time, or both, would constitute a default under any one or more Material Agreements which could result in the acceleration of amounts owing by TPC under any such Material Agreements.
- (17) Financial Information. The financial statements of TPC furnished to Hydro pursuant to this Agreement have been prepared in accordance with GAAP consistently applied, and present fairly the financial portion of TPC as at the dates thereof and the results of TPC's operations for the periods then ended. All balance sheets, all statements of operations, shareholders' equity and cash flow and all other financial information of TPC furnished pursuant to Section 10.1(1) have been and will for periods following the Initial Closing be prepared in accordance with GAAP, consistently applied, and do or will present fairly the consolidated financial

position of TPC as at the dates thereof and the results of their operations for the periods then ended.

- (18) Resident of Canada. TPC is a resident of Canada for the purposes of the Income Tax Act (Canada).

Each of the representations and warranties contained in this Section 9.1 shall be deemed to be continually repeated by TPC at the time of each Advance.

9.2 Survival of Representations and Warranties.

All the representations and warranties of TPC contained in Section 9.1 of this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts owing hereunder have been repaid and the Equity Credit Facility has been terminated notwithstanding any investigation made at any time by or on behalf of Hydro.

9.3 Representations by Hydro.

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

- (1) Hydro is a corporation duly incorporated and organized and validly subsisting under the Laws of Manitoba and has the corporate power and authority to own or lease its property and to enter into this Agreement and each of the other Loan Documents to which it is a party and to perform its obligations hereunder and thereunder.
- (2) This Agreement and the Loan Documents to which Hydro is a party have been duly authorized, executed and delivered by Hydro and are legal, valid and binding

obligations of Hydro, enforceable against Hydro by TPC to the extent that TPC is a party thereto, in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency and other Laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, or, by this Agreement, at the discretion of the arbitrator.

- (3) Subject only to obtaining the Authorizations described in Schedule H, the execution and delivery of this Agreement and each of the Loan Documents to which Hydro is a party and the consummation the transactions herein provided for by Hydro will not result in:
- (a) the breach or violation of any other provisions of or constitute a default under or conflict with or cause the acceleration of any obligation of Hydro under:
- (i) any contract to which Hydro is a party or by which it, or any of its property, is bound;
 - (ii) any provision of the constating documents, by-laws or resolutions of the Board of Directors (or any committee thereof) or shareholders of Hydro;
 - (iii) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over Hydro; or
 - (iv) any applicable law, statute, ordinance, regulation or rule, including, without limitation, the *Hydro Act*; or

- (b) the creation or imposition of any Lien on any investment transaction or any of the property or assets of Hydro;

- (4) Hydro is a resident of Canada for the purposes of the Income Tax Act (Canada).

- (5) None of:
 - (a) this Agreement;
 - (b) any of the Loan Documents; or
 - (c) any certificate or statement in writing which has been supplied by or on behalf of Hydro and is a document that is required to be delivered to TPC pursuant to the provisions of this Agreement or any of the other Loan Documents;

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

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

Each of the representations and warranties contained in this Section 9.3 shall be deemed to be continually repeated by Hydro at the time of each Advance.

9.4 Survival of Representations and Warranties.

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

**ARTICLE X
COVENANTS OF TPC**

10.1 Affirmative Covenants.

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

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

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

- (a) a copy of each management letter or report submitted to the board of directors (or any committee thereof) or senior management of any of TPC by the Auditors in connection with any annual, interim or special audit made by them of the books of TPC, together with the related response of TPC to be delivered promptly upon the issuance of the response by TPC;
 - (b) promptly after the occurrence of each Event of Default, a statement of TPC setting forth the details of such Event of Default and the action which TPC proposes to take or have taken with respect thereto;
 - (c) promptly after the commencement thereof, Notice of Claims which have been commenced against TPC (notice of which has been served on TPC, or to the best of the knowledge of TPC, have been commenced or are pending or threatened against TPC, for amounts which exceed \$75,000 in the aggregate at any time or affect any of the Collateral;
 - (d) promptly after the occurrence of any material development with respect to any Claims referred to in Section 10.1(2)(c), and in any event within three (3) Business Days after TPC obtains knowledge of the occurrence thereof, Notice thereof to Hydro, and, to the extent Hydro requests them, copies of all documentation relating thereto; and
 - (e) such other information and reports relating to TPC, the Collateral or the Business, as Hydro may from time to time reasonably request.
- (3) **Corporate Existence.** Preserve and maintain TPC's corporate existence.
- (4) **Compliance with Laws.** Comply, in all material respects, with the requirements of all applicable Laws.

- (5) **Payment of Taxes, Claims and Governmental Licence Fees.** Pay and discharge, before the same shall become delinquent:
- (a) all Taxes, governmental assessments, charges or levies and Claims imposed upon it or upon any of its Property;
 - (b) all lawful Claims which, if unpaid, might by Law become a Lien upon its Property, in each case except for any such Tax, assessment, charge, levy or Claim which would result in a Lien which is a Permitted Lien; and
 - (c) all fees payable to Governmental Entities or other authorities in connection with all governmental licences issued to and held by TPC, (if any).
- (6) **Keeping of Books.** Keep proper books, records and accounts, in which full and correct entries shall be made of all of TPC's financial transactions in accordance with GAAP.
- (7) **Visitation and Inspection.** If, in the reasonable opinion of Hydro, an Event of Default has or may have occurred, at any reasonable time or times and upon reasonable prior notice given to TPC by Hydro permit Hydro or any of its authorized representatives, full and reasonable access to the premises of TPC and obtain any consents and waivers from any Person necessary, in the reasonable opinion of Hydro to ensure such access, for the purposes of inspecting (and, where required, taking copies of) the business, financial and computer records of TPC and to discuss the business, affairs, finances and accounts of, and the compliance by TPC with the terms of this Agreement and the other Loan Documents with the management and Auditors thereof.

- (8) **Protect Hydro Liens.** At all times take all action and supply Hydro with all such information reasonably necessary to allow Hydro to create, maintain, perfect, protect and preserve the Liens provided for under the Security Documents and confer upon Hydro the security interest intended to be created thereby.
- (9) **Payments.** Subject to Section 3.7(3), pay all amounts of principal, interest, costs and expenses on the dates, at the times and at the places specified in this Agreement or under any other Loan Document, but subject to the provisions of Section 12.2 in respect of costs and expenses.
- (10) **Use of Proceeds.** Apply the proceeds of the Equity Credit Facility only in accordance with Sections 2.4 and 3.4.
- (11) **Payment of Preferred Claims.** Pay, as and when due, any and all amounts which may result in a Lien on the Collateral under applicable Law (other than a Permitted Lien), whether or not such Lien is entitled to priority over the Liens in favour of Hydro under the Security Documents.
- (12) **Loan Documents.** Execute and deliver to Hydro the Loan Documents.
- (13) **Material Agreements.** Comply with the provisions of all of the Materials Agreements. In respect of each Material Agreement executed by TPC after the date hereof (each a “**Future Material Agreement**”), provide to Hydro a certified true copy of each Future Material Agreement.
- (14) **Notice of Defaults.** TPC shall immediately notify Hydro:
- (a) of any Event of Default or of any event, occurrence, condition or act which, with the giving of Notice, the lapse of time or the happening of any other event or condition, would become an Event of Default, or of any material default (either by

TPC or by any other party) under any Material Agreement or of any event which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a material default under or would otherwise allow the termination of any Material Agreement, and thereafter provide Hydro with all information reasonably requested by Hydro from time to time concerning the status thereof;

(b) on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding, labour or industrial dispute, the result of which if determined adversely would have a Material Adverse Business Effect on the ability of TPC to perform its obligations under this Agreement and the other Loan Documents, and thereafter provide Hydro with all information reasonably requested by Hydro concerning the status thereof.

(15) **Changes in Year End or Auditors.** TPC shall provide prior notice to Hydro of any changes in its Financial Year end or its auditors, specifying the new Financial Year end or auditors, as the case may be;

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

10.2 Negative Covenants.

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

- (1) **Business Activity.** Engage in any business activity except the Business.
- (2) **Liens.** Create, incur, assume or suffer to exist, any Lien on TPC's Property, including the Collateral and the Capital Stock of TPC other than Permitted Liens.
- (3) **Disposal of Property.** Dispose of any of the Collateral without the prior written consent of Hydro.
- (4) **Debt.** Allow, except with the prior consent of Hydro, any Debt to be created, incurred, assumed or suffered to exist, directly or contingently or otherwise, other than:
 - (a) Debt to Hydro;
 - (b) unsecured current liabilities incurred and payable in the ordinary course of the Business and not represented by any note, bond or debenture; or
 - (c) Purchase Money Debt, provided that the payments under such Purchase Money Debt do not exceed, in any one year period, \$15,000.
- (5) **Mergers.** Reorganize, amalgamate, merge, consolidate or otherwise enter into any form of business combination with any other Person.
- (6) **Guarantees and Indemnities.** Guarantee or indemnify or give financial assistance in respect of any contingent liability in respect of any Debt or any other obligations or liabilities of any other Person at any time other than TPC's guarantee of the Debt owed by NCN to Hydro under the NCN Financing Agreement.
- (7) **Dividends.**

- (a) Declare or pay any dividends or other distributions after Hydro has provided notice to TPC that an Event of Default has occurred; or
 - (b) Declare or pay any dividends or other distributions, in any other circumstances if, after declaring or paying such Dividends or other distributions, TPC would not be able to meet its Obligations under the Loan Documents.
- (8) **Financial Year and Auditors.** Change its Financial Year end or its Auditors
- (9) **Change in Constating Documents or Capital Stock.**
- (a) Make any change in the constating documents or by-laws of TPC as delivered to Hydro which would:
 - (i) amend the authorized shares or other equity securities of TPC;
 - (ii) otherwise be detrimental to the rights or interests of Hydro under any of the Loan Documents.
 - (b) Issue any Capital Stock in TPC that would cause an Event of Default to occur or that would cause a Change of Control of TPC.
- (10) **Material Agreements.** Amend, supplement, terminate or waive, or enter into any forbearance from exercising any rights with respect to, any of the terms of any Material Agreement in a manner which would cause a Material Adverse Business Effect or an Event of Default hereunder.
- (11) **Limited Partnership Payments.** Make any payment to the Limited Partnership unless at least thirty (30) calendar days prior to the proposed date TPC intends to make the payment to the Limited Partnership it delivers to Hydro a statutory

declaration signed by a duly authorized officer of TPC (each such statutory declaration a “**Limited Partnership Payment Certification**”) which shall certify as to the source of the money to be used to make the proposed payment to the Limited Partnership and shall disclose all material information relating to the money to be used in respect of the proposed payment and shall attach notarized copies of all material documents. Hydro shall have the right to request from TPC, within five (5) calendar days of receipt of the Limited Partnership Payment Certification such additional information and notarized copies of documents relating to the monies to be used in respect of the proposed payment as it may require, acting reasonably, and to receive such written consents and waivers from TPC to obtain additional information and documents from any other Person relating to the monies to be used in respect of the proposed payment as Hydro may request, acting reasonably. Hydro shall be required to confirm in writing within twenty (20) calendar days of receipt of the Limited Partnership Payment Certification whether or not it will accept the Limited Partnership Payment Certification, unless the time period is extended by Hydro, acting reasonably, due to Hydro awaiting receipt of the additional information and documents as it may have requested in connection to the Limited Partnership Payment Certification.

If Hydro accepts the Limited Partnership Payment Certification, TPC shall be permitted to make the proposed payment to the Limited Partnership on the condition it provides to Hydro (with concurrent notice to Hydro of the payment that is made to the Limited Partnership and for greater certainty the payment will under this Agreement be Approved Funds and will form part of TPC’s Invested Cash), a statutory declaration signed by a duly authorized officer of TPC certifying there has been no material change to any of the information or documents provided by TPC in the Limited Partnership Payment Certification or obtained by Hydro concerning the monies being paid to the Limited Partnership, including the source of the monies. TPC shall not make the payment without providing the said statutory

declaration. Hydro shall be required to accept the Limited Partnership Payment Certification, if Hydro determines, acting reasonably, that the monies being used for the payment fall within the definition of TPC's Own Funds or based on Hydro's analysis of the information disclosed and documents provided or otherwise obtained by Hydro. If based on Hydro's analysis, acting reasonably, Hydro determines that the said monies fall within the definition of TPC's Third Party Funds, then Hydro is entitled, acting reasonably, to reject or accept the Limited Partnership Payment Certification. In making that determination, Hydro will consider the source of the monies, the terms of any financing, any repayment requirements associated with the monies that have been provided, whether or not any Person has recourse against TPC's Units in the event of default in respect of any financing associated with obtaining the monies and, if so, the likelihood of that right being exercised. If Hydro rejects the Limited Partnership Payment Certification, TPC shall not be entitled to proceed with the proposed payment. If Hydro accepts the Limited Partnership's Payment Certification, the payment can be made and the funds will be Approved Funds and once the payment is made, it shall form part of TPC's Invested Cash.

- (12) **Change of Control.** There shall be no Change of Control.
- (13) **Change of Registered Owner.** Change the registered owner of the Capital Stock of TPC to any person other than the Chief or a Councillor of NCN, as bare trustee for NCN, or change the form of bare trustee declaration prior to obtaining the written consent of Hydro to the change.

10.3 **Cross-Default.**

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

ARTICLE XI
SECURITY

11.1 **Security.**

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

11.2 **Security Documents Prevalence.**

Notwithstanding anything to the contrary herein, this Agreement shall be interpreted in all respects having regard for the fact that, and the Security Documents shall provide that, (a) Hydro has a first charge security interest on TPC’s Units and the Distributions on TPC’s Units and any interest related to TPC’s Units and the said Distributions; and (b) Hydro’s sole recourse for payment of the Obligations shall be to the Collateral in accordance with the provisions of this Agreement, and for greater certainty, it shall have no right to sue TPC or NCN on any personal covenant to pay all or any of the Obligations. Without limiting the generality of the foregoing, it is agreed, and the Security Documents shall provide that if TPC is in default of the repayment provisions specified in Section 2.5, Hydro’s sole recourse for the payment of the Total Outstandings under (and all other

amounts owing to Hydro for costs, interest or otherwise in connection with) the Equity Credit Facility on the Maturity Date shall be to TPC's Loan Units and the Distributions thereon.

11.3 Registrations.

Hydro, in its sole discretion, may register, file or record the Liens constituted by the Security Documents in all jurisdictions where such registration, filing, or recording is necessary or of advantage to the creation, perfection, preservation or protection of such Liens.

11.4 Renewals Registrations, Filings, Recordings.

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

ARTICLE XII
EVENTS OF DEFAULT

12.1 **Events of Default.**

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

- (a) TPC shall fail to pay any portion of the principal or interest or any costs or other amounts due hereunder or under any of the other Loan Documents on the date when due hereunder, and such amount remains unpaid for a period of six (6) Business Days after Hydro notifies TPC that the amount is overdue, provided however, that this provision shall be read in conjunction with Section 12.2 and with the provisions in this Agreement and the other Loan Documents which provide that, for so long as no Event of Default has occurred that remains outstanding and uncured, all such payments to Hydro are to be made solely through the irrevocable assignment and direction to Hydro of the Distributions on TPC’s Units (or portion thereof, as applicable hereunder) prior to the Maturity Date (and, in certain circumstances hereunder, after the Maturity Date), and from no other source, such that for so long as the Distributions are so assigned and directed and are paid over to Hydro as and when declared by the General Partner of the Limited Partnership pursuant to the irrevocable assignment and direction in favour of Hydro, TPC shall be deemed to be in compliance with its covenants to pay for all purposes hereunder and under the other Loan Documents. The parties hereto acknowledge that neither TPC nor NCN control the timing or amount of such Distributions, and as such, there may be periods of time during which there are no or few Distributions to be paid over to Hydro in accordance with the irrevocable assignment and direction to Hydro, and this shall not be construed to be an Event of Default hereunder;

- (b) any representation or warranty or certification made or deemed to be made by TPC pursuant to or in connection with any of the Loan Documents delivered to Hydro shall prove to have been incorrect in any material respect when made or deemed to have been made;
- (c) TPC shall fail to perform or observe any other term, covenant or agreement contained in any of the Loan Documents on its part to be performed or observed and such failure shall remain unremedied for fifteen (15) Business Days (the “**Cure Period**”) after written notice thereof shall have been given to TPC by Hydro; provided that the length of the Cure Period shall be extended by Hydro in its unfettered discretion where TPC demonstrates to Hydro that the breach is not capable of being cured within fifteen (15) Business Days but provides Hydro, within ten (10) Business Days, with a plan for curing the breach within sixty (60) calendar days and in good faith implements such plan;
- (d) any of the Loan Documents, at any time, is not or ceases to be valid or enforceable in whole or in part, or if any Lien intended to be created by any of the Security Documents is not or ceases to be a valid and perfected Lien having the ranking or priority contemplated thereby, or if the validity or enforceability of any of the Loan Documents or the validity or perfection of any such Lien shall be contested by any party thereto or any other Person (unless such contestation by such party or other Person is being opposed diligently, in good faith and by proper legal proceedings by Hydro with the assistance of TPC and Hydro covenants to oppose such contestation in good faith where there is a reasonable prospect of success), or if any Person (other than Hydro or the Limited Partnership) obtains any interest in the Collateral or any part thereof (except Permitted Liens); provided however, that this provision shall only be invoked where Hydro, acting reasonably, has determined that its inability to enforce the said Lien with its intended ranking or priority cannot be cured by Hydro within a reasonable period of time or without Hydro being

adversely affected notwithstanding that TPC has provided a written undertaking to assist Hydro in the manner set out therein to cure the inability of Hydro to enforce the said Lien with its intended ranking or priority;

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

Material Agreement, and such default shall continue unremedied after any applicable grace period specified in such Material Agreement;

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

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

- (k) the occurrence of a Change of Control;
- (l) the loss, suspension or failure to renew any licence or permit held by TPC or any agreement to which TPC is a party the effect of which would prohibit or otherwise restrict TPC from conducting all or a material part of the Business;
- (m) TPC is enjoined or restrained in any material way by an order of any Governmental Entity, arbitrator or board in Canada or elsewhere from conducting all or a material part of the Business;
- (n) the occurrence of a Material Adverse Business Effect;
- (o) the occurrence of an Event of Default committed by TPC or NCN (as such term is defined in the NCN Financing Agreement); or
- (p) the occurrence of any event, condition or circumstance which, with the giving of notice or passage of time, or both, would constitute an Event of Default after the expiration of, in the case of a Loan Document, the applicable Cure Period or in the case of any other agreement, the applicable cure period (if any) thereunder;

then, and in any such event, Hydro shall be entitled by written notice to TPC to: (i) terminate the obligation of Hydro to make further Advances under the Equity Credit Facility; and/or (ii) demand repayment of all indebtedness of TPC to Hydro under the Equity Credit Facility, whereupon the principal amount of all outstanding Advances and other amounts payable thereunder shall become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by TPC (except such notices as may be required under applicable Laws). Provided, however, that Hydro shall only have recourse to the Collateral for the repayment of the Obligations, and further provided, however, that upon any Event of Default

specified in Section 12.1(g), the obligation of Hydro to make Advances hereunder shall automatically terminate.

12.2 Expenses of Hydro.

Upon the occurrence of any Event of Default which has not been waived and is continuing, Hydro may take any action Hydro considers advisable, acting reasonably, to remedy the effect of such Event of Default. All reasonable expenses, costs and charges incurred by or on behalf of Hydro in connection with: (i) any remedial action taken pursuant to this Section; or (ii) the realization of the Collateral, including all reasonable fees, court costs, Receiver's or agent's remuneration and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment of the Collateral, in all cases shall be added to and form a part of the Obligations, but subject always to the provision that Hydro's sole recourse for payment of the Obligations shall be to the Collateral, as set out herein. For greater certainty, for so long as there is no Event of Default hereunder, Section 5.14 of the PDA shall govern the payment of Hydro's costs and expenses properly recoverable hereunder.

12.3 Remedies Cumulative.

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

12.4 Allocations.

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

ARTICLE XIII
PAYMENTS, COMPUTATIONS AND INDEMNITIES

13.1 **Timing of TPC Payments.**

Unless otherwise expressly provided in this Agreement or agreed to by Hydro, TPC shall make any payment required to be made by it to Hydro by depositing the amount of such payment in Hydro's Account not later than 11:00 a.m. (Winnipeg time) on the date such payment is due.

13.2 **Timing of Hydro Payments.**

Unless otherwise expressly provided in this Agreement and subject to the provision by Hydro of the requisite notice to TPC and the General Partner as set out in Section 4.2(1), Hydro shall make any Advance or other payment to TPC hereunder by crediting or causing the crediting of the Limited Partnership Account for TPC with the amount of such Advance on the date such Advance is to be made.

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

Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

13.4 **Overdue Amounts.**

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

13.5 Application of Payments, Repayments and Prepayments.

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

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

13.6 Computations of Interest and Fees.

All computations of interest shall be made by Hydro, taking into account the actual number of days occurring in the period for which such interest is payable pursuant to Sections 4.4(a)(i) and on the basis of a year of 365 days, except for interest payable under Sections 4.4(a)(ii) and 4.4(a)(iii), in respect of which the computation of interest shall be made based on a semi-annual interest computation and not by the number of days in the six (6) month period.

Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the aggregate “interest” (as defined in Section 347 of the *Criminal Code* (Canada), as the same may be amended, replaced or re-enacted from time to time) payable under this Agreement exceed the maximum amount of interest on the “credit advanced” (as defined in that Section) under this Agreement lawfully permitted under that Section and, if any payment, collection or demand pursuant to this Agreement in respect of “interest” (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand shall be refunded to TPC. For purposes of this Agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the Equity Credit Facility is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of any dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Hydro will be conclusive for the purposes of such determination.

Each determination by Hydro of any amount payable hereunder by TPC shall be prima facie evidence of the amount payable for all purposes absent error.

13.7 Indemnity for Change in Circumstances.

If with respect to Hydro:

- (a) any change in Law, or any change in the interpretation or application by any Governmental Entity of any Law occurring or becoming effective after the date hereof; or

(b) any compliance by Hydro with any direction or requirement having the force of Law of any Governmental Entity made or becoming effective after the date hereof, in either case shall have the effect of causing Loss to Hydro by:

- (i) increasing the actual cost to Hydro of performing its obligations under this Agreement or in respect of any Advance; or
- (ii) reducing any amount otherwise properly payable to Hydro under this Agreement or in respect of any Advance by any amount that Hydro deems material acting reasonably (other than pursuant to Section 13.6);

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

13.8 Taxes on TPC Payments.

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

- (a) promptly notify Hydro of such requirement;
- (b) pay to the appropriate authority the full amount required to be so withheld or deducted before penalties attach thereto or interest accrues thereon;

- (c) promptly forward to Hydro an official receipt or other documentation reasonably satisfactory to Hydro evidencing such payment to such authority; and
- (d) pay to Hydro an additional amount so that Hydro receives the full amount it would have received had no such deduction or withholding been required.

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

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

Hydro acknowledges that in respect of this Section 13.6(2), Taxes shall not include any income taxes that may be payable by Hydro. Hydro shall remain solely obligated to pay and shall save TPC and NCN harmless from any income taxes that may be asserted against Hydro or payable by Hydro, including with respect to any payments or amounts received or made under this Agreement.

13.9 Indemnity.

TPC hereby agrees to indemnify, exonerate and hold Hydro and its officers, directors, employees, agents and other representatives (in this Section 13.7(1), the “**Indemnified Parties**”) free and harmless from and against any and all Claims, demands, actions, causes of action, suits, losses, costs (including all documentary, recording, filing, mortgage duties), charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is

a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this Section 13.7(1), the “**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them or, with respect to, or as a direct or indirect result of: (i) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Advances obtained hereunder; or (ii) the execution, delivery, performance or enforcement of this Agreement or any of the Loan Documents, except for such Indemnified Liabilities that a court of competent jurisdiction determines or rules to be on account of the relevant gross negligence or willful misconduct of the Indemnified Party or any Person for whom such Indemnified Party is responsible at law (in which event, such Party shall indemnify TPC, and its officers and directors, for all Indemnified Liabilities paid, incurred or suffered by or asserted against any of them arising out of such gross negligence or willful misconduct).

13.10 TPC Obligations.

All obligations provided for in this Section 13.7 shall not be reduced or impaired by any investigation made by or on behalf of Hydro. If, for any reason, the obligations of TPC pursuant to this Section 13.7 shall be unenforceable, TPC agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or willful misconduct of Hydro or any Person for whom Hydro is responsible at law (in which event such Party shall indemnify TPC, and its officers and directors for all Indemnified Liabilities paid, incurred or suffered by or asserted against any of them arising out of such gross negligence or willful misconduct).

13.11 Contribution.

If any provision in any of the Loan Documents providing for indemnification by TPC (the “**Indemnitor**”) in favour of Hydro or any of the Indemnified Parties (as defined in Section 13.7)

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

13.12 Market Make-whole Payment

In the event of a voluntary payment of principal by TPC to Hydro prior to the date on which such payment is due and payable (other than any payment of interest or costs whatsoever or any payment out of Distributions, including payments of principal pursuant to any of Sections 2.6(2), 2.6(2) from Distributions on TPC’s Units), the principal amount of the repayment shall be an amount calculated by Hydro on the Business Day preceding the date of repayment equal to the applicable Canada Yield Price on the Business Day preceding the date of the payment less the principal amount of the Equity Credit Advances that are being repaid. For greater certainty, if the amount so determined is a positive number it shall increase the principal amount to be repaid by that amount, and if it is a negative number it shall reduce the principal amount to be repaid by that amount.

13.13 Confirmation of Limited Recourse.

For greater certainty, Hydro acknowledges that nothing in this Article XIII shall in any way detract from the limited recourse nature of Hydro’s security and remedies hereunder, as set out in Section 11.1 of this Agreement.

ARTICLE XIV
DISPUTE RESOLUTION

14.1 **Dispute Resolution.**

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

ARTICLE XV
GENERAL PROVISIONS

15.1 **Notices.**

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

recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

Each Borrowing Notice and Repayment Notice shall be irrevocable and binding on TPC.

15.2 Time of the Essence.

Time shall be of the essence of this Agreement.

15.3 Third Party Beneficiaries.

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the parties hereto and the Persons contemplated in Section 13.7 or Section 15.7, and no Person, other than the parties hereto and the Persons contemplated in Section 13.7 or Section 15.7, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. For greater certainty, nothing in this Section 15.3 is intended to prevent or restrict the Taskinigaph Trust from receiving Dividends declared by the Board of Directors of TPC pursuant to the NCN Deed of Assignment subject always to TPC's compliance with the covenants, representations and warranties of this Agreement.

15.4 Enurement.

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

15.5 Counterparts.

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

15.6 **Knowledge.**

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

15.7 **Assignment.**

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

15.8 **Non-Merger.**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of the Parties in this Agreement and the Loan Documents shall not merge on and shall survive the Initial Closing, the Final Closing and the Final Investment Closing and the making of any Advance, and notwithstanding such Initial Closing and Final Closing and the Final Investment or Advance, or any investigation made by or on behalf of any party, shall continue in full force and effect. Neither the Initial Closing, the Final Closing or the Final Investment Closing nor the making of any Advance shall prejudice any right of one party against any other party in respect of anything done or omitted hereunder or under any of the other Loan Documents or in respect of any right to damages or other remedies.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, on the date first above written.

TASKINIGAHP POWER CORPORATION

Per:

Name:
Title: President

Per:

Name:
Title: Vice- President

Per:

Name: Shirley L. Linklater
Title: Secretary-Treasurer

**THE MANITOBA HYDRO-ELECTRIC
BOARD**

Per:

Name: Title: President and Chief Executive
Officer

Per:

Name: Title: Assistant Corporate Secretary

SCHEDULE A

REPAYMENT NOTICE

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

FROM: TASKINIGAHP POWER CORPORATION (“TPC”)

This Repayment Notice is delivered to you pursuant to Section 4.6 of the financing agreement (the “TPC Financing Agreement”) dated ●, 2015 between TPC, as borrower, and Hydro, as lender. All capitalized terms used in this Repayment Notice and defined in the TPC Financing Agreement shall have the meanings defined in the TPC Financing Agreement.

1. TPC hereby gives notice of repayment as follows:

- (a) Date of repayment:
- (b) Type of Advance:
- (c) Amount of principal being repaid:

TASKINIGAHP POWER CORPORATION

Per:

Name:

Title:

Per:

Name:

Title:

SCHEDULE B

[intentionally blank]

SCHEDULE C

ISSUED AND OUTSTANDING CAPITAL STOCK AND DEBT

To be provided on Final Investment Date

SCHEDULE D
MATERIAL AGREEMENTS

Provided on Initial Closing

SCHEDULE E

LIABILITIES

Provided on Initial Closing

SCHEDULE F

ADDRESS FOR NOTICE

Taskinigahp Power Corporation
Attention: President
General Delivery
Nelson House, MB R0B 1A0
Fax: (204) 484-2392

Manitoba Hydro
Attention: General Counsel
360 Portage Avenue
Winnipeg, MB R3C 0G8
Fax: (204) 360-4947

SCHEDULE G

LIST OF SECURITY DOCUMENTS

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

SCHEDULE H

AUTHORIZATIONS – HYDRO

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

SCHEDULE 8.1
SECOND AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

**SECOND AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT**

between

5022649 MANITOBA LTD.,

- and -

TASKINIGAHP POWER CORPORATION,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD.

DATED as of March 31, 2015

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**SECOND AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT**

This Agreement made as of the 31st day of March, 2015.

BETWEEN:

5022649 MANITOBA LTD.,

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

OF THE FIRST PART,

- and -

TASKINIGAHP POWER CORPORATION,

(hereinafter called “**Taskinigahp Power Corporation**”),

OF THE SECOND PART

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter called “**Hydro**”),

OF THE THIRD PART.

WHEREAS the **General Partner** was incorporated under the laws of the Province of Manitoba on November 30, 2004;

AND WHEREAS a partnership agreement (the “**Initial Agreement**”) was entered into on the 9th day of December, 2004, between the **General Partner** and the **Initial Limited Partner**;

AND WHEREAS under the **Initial Agreement**, the **General Partner** and the **Initial Limited Partner** formed a partnership known as the Wuskwatim Power Limited Partnership (the “**Partnership**”) which was registered in accordance with the laws of the Province of Manitoba as a limited partnership on the 9th day of December 2004;

AND WHEREAS the **Initial Agreement** was amended and restated pursuant to an agreement dated the 28th day of June, 2006 between the **General Partner, Taskinigahp Power Corporation** and **Hydro** (“**First Amended and Restated Agreement**”);

NOW THEREFORE in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

GENERAL INTERPRETATION

Definitions

1.01 For the purpose of this Agreement, the following terms shall be deemed to have the following meanings:

- (a) “**Act**” means *The Partnership Act* (Manitoba);
- (b) “**Affiliate**” has the meaning ascribed to affiliate or associate as those terms are defined in *The Securities Act* (Manitoba);
- (c) “**Agreement**” means this Amended and Restated Limited Partnership Agreement and any amendments or modifications made thereto, including without limitation any schedules or appendices attached hereto;
- (d) “**Allowable Operating Expenses**” means all expenses incurred directly or indirectly by the **General Partner** in managing the **Business** of the **Partnership**, including, without limiting the type of expenses, all administrative expenses, including the costs of holding meetings of the board of directors of the **General Partner** and preparing financial statements of the **General Partner** but, for greater certainty, shall not include any costs other than costs incurred in furtherance of the **Business** or which are properly allocated, in whole or in part, to the **Business**, and, without limiting the generality of the foregoing, shall not include any of the costs incurred by **Hydro** in building the project known as the Churchill River Diversion nor any of the costs incurred by **Hydro** and allocated to the operation of the project known as the Churchill River Diversion;
- (e) “**Business**” shall have the meaning ascribed to it in section 2.05 hereof;
- (f) “**Capital Contribution**” means, with respect to a **Partner**, the amount in cash or other property contributed to the **Partnership** by such **Partner**;
- (g) “**Construction Agreement**” means the agreement to be entered into by the **Partnership** as owner and **Hydro** as project manager in substantially the same form as described in the **PDA**;

- (h) “**Declaration**” means the declaration pursuant to the Act to be filed under *The Business Names Registration Act* of Manitoba;
- (i) “**Debt Ratio**” means for any particular day, the quotient of the Limited Partnership’s Net Debt (as defined in the Project Financing Agreement) on such day divided by the sum of: (i) the Limited Partnership’s Net Debt on such day; and (ii) the Limited Partnership’s Equity (as defined in the Project Financing Agreement) on such day, expressed as a percentage;
- (j) “**Distributable Cash**” in respect of any distribution period, means **EBITDA** earned by the **Partnership** for such period, plus any additional cash on hand at the end of a distribution period and any additional amounts that the **General Partner** approves for distribution, less: (i) payments to satisfy debt service obligations (including principal, interest and deposits for debt retirement) incurred in such period under credit facilities of the **Partnership** (including under the **Project Financing Agreement**) or other agreements to which the **Partnership** is bound; (ii) payments to satisfy general and administrative expenses and other known expense obligations of the **Partnership**; and (iii) amounts retained in respect of the distribution period to cover (1) anticipated expenses, (2) reserves under section 6.06 of this **Agreement** and (3) the amount (if any) required to be held as equity in order to maintain the **Debt Ratio** in accordance with section 6.05;
- (k) “**EBITDA**” for any period means earnings before interest, income taxes, depreciation and amortization, determined in accordance with **Generally Accepted Accounting Principles** (“earnings” for this purpose means the **Net Income** or **Net Loss**, as applicable, for that period);
- (l) “**Final Closing Date**” has the meaning ascribed thereto in the **PDA**;
- (m) “**Financial Statements**” shall mean the audited financial statements of the **Partnership** prepared in accordance with **Generally Accepted Accounting Principles**;
- (n) “**Fiscal Year**” means the fiscal year of the **Partnership** as described in section 2.04;
- (o) “**General Partner**” shall mean 5022649 Manitoba Ltd. or any other **Person** who may become the general partner of the **Partnership** in place of or substitution for 5022649 Manitoba Ltd. and is deemed to be the **General Partner** from time to time under the terms of this **Agreement**;
- (p) “**Generally Accepted Accounting Principles**” means, at any time, accounting principles as recommended by the Canadian Institute of Chartered Accountants, or any successor **Person** at such time;
- (q) “**Hydro**” means The Manitoba Hydro-Electric Board, a Crown corporation continued by The Manitoba Hydro Act, R.S.M. 1987, c.H190;

- (r) “**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;
- (s) “**Initial Agreement**” means the Limited Partnership Agreement between the **General Partner** and the **Initial Limited Partner** signed December 9, 2004;
- (t) “**Initial Limited Partner**” means **Hydro**;
- (u) “**Integrated Power System**” means **Hydro’s** integrated system of hydraulic and thermal electric generation and power transmission facilities owned and operated by **Hydro** or in some circumstances, owned by **Hydro** in partnership with others, which system is interconnected with other power utilities. The **Wuskwatim Project** will be part of the **Integrated Power System**.
- (v) “**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, and to be subsequently assigned by **Hydro** (Power Supply Business Unit) to the **Limited Partnership**, whereby the **Wuskwatim Project** will be interconnected with the **Integrated Power System**;
- (w) “**Limited Partner**” shall mean **Hydro** or **Taskinigahp Power Corporation** for so long as each is a holder of at least one **Unit**;
- (x) “**Limited Partnership**” or “**Partnership**” means the Wuskwatim Power Limited Partnership formed pursuant to the **Initial Agreement**, as amended and restated by this **Agreement**, for the purpose of the **Business**;
- (y) “**Management Agreement**” means the agreement entered into between the **Partnership** as owner and **Hydro** as contractor in substantially the same form as described in the **PDA**;
- (z) “**NCN**” means the Nisichawayasihk Cree Nation;
- (aa) “**NCN Adverse Effects Agreement**” means the agreement to be entered into by the **General Partner** on behalf of the **Partnership** and **NCN** and **Hydro** in substantially the same form as described in the **PDA**;
- (bb) “**NCN Financing Agreement**” means the agreement to be entered into between **NCN**, **Taskinigahp Power Corporation** and **Hydro** in substantially the same form as described in the **PDA**;
- (cc) “**Net Income**” or “**Net Loss**” in respect of any **Fiscal Year** means, respectively, the income or loss of the **Partnership** for such period determined in accordance with Section 6.07;

- (dd) “**Operations and Maintenance Agreement**” means the agreement to be entered into between the **Partnership** as owner and **Hydro** as contractor in substantially the same form as described in the **PDA**;
- (ee) “**Ordinary Resolution**” means a resolution passed by **Partners** holding, in the aggregate, a majority of the issued and outstanding **Units**, who, being entitled to do so, vote in person or by proxy at a duly convened meeting of **Partners** or any adjournment thereof or, alternatively, pass such a resolution unanimously in writing in lieu of a meeting;
- (ff) “**Partner**” means the **General Partner** or any **Limited Partner** and “**Partners**” means all **Limited Partners** together with the **General Partner**;
- (gg) “**Partnership Assets**” means all assets and property, whether tangible or intangible and whether real, personal or mixed, at any time owned legally or beneficially by the **Partnership**;
- (hh) “**Person**” means and includes any individual, corporation, partnership, firm, trust or any other form of entity or organization;
- (ii) “**Power Purchase Agreement**” means the agreement to be entered into between the **Partnership** as owner and **Hydro** in substantially the same form as described in the **PDA**;
- (jj) “**PDA**” means the project development agreement entered into by **Hydro**, **NCN**, **Taskinigahp Power Corporation**, the **General Partner** and the **Partnership** regarding the planning, development and construction of the **Wuskwatim Project** and the operation of the **Business**;
- (kk) “**Project Financing Agreement**” means the agreement to be entered into between the **Partnership** and **Hydro** in substantially the same form as described in the **PDA**;
- (ll) “**Record of Limited Partners**” means the record required to be maintained by the **General Partner** at the principal place of business of the **Partnership** pursuant to The Business Names Registration Act, C.C.S.M. c. B110;
- (mm) “**Refinancing**” means any borrowings made by the **Partnership** for any purpose other than operating purposes, which are secured by a mortgage or other charge on or against the **Partnership's** interest in the **Partnership Assets**;
- (nn) “**Refinancing Proceeds**” means the net proceeds resulting from a **Refinancing**;
- (oo) “**Registrar and Transfer Agent**” means the **General Partner** or an agent appointed thereby to keep a register of **Limited Partners** and a register of the transfer of **Units**;
- (pp) “**Sale**” means the disposition of all or any part of the **Partnership Assets**, whether by way of sale, expropriation or otherwise;

- (qq) “**Sale Proceeds**” means:
- i) the proceeds resulting from a **Sale**, after deducting the amounts required to discharge or partially discharge any security relating thereto, and/or repay or partially repay loans incurred in respect of the acquisition of any asset of the **Partnership** for which the **Sale Proceeds** are received and all costs incurred as a result of such **Sale**; and
 - ii) the proceeds of any insurance to the extent not applied to repair, rebuild or replace some or all of the assets held by the **Partnership**;
- (rr) “**Special Resolution**” means:
- i) a resolution approved by all of the votes cast in person or by proxy at a duly constituted meeting of **Partners** who are entitled to vote or at any adjournment of that meeting, called in accordance with this Agreement; or
 - ii) a written resolution in one or more counterparts signed by Partners holding in the aggregate all of the **Units** held by those **Partners** who are entitled to vote on that resolution at a meeting;
- (ss) “**Subscription Agreement**” means the subscription form and power of attorney attached hereto as Schedule “A”, or as determined by the **General Partner** pursuant to section 5.04 of this Agreement;
- (tt) “**Subscription Price**” means the price per **Unit** payable by a **Person** to purchase a **Unit** as set forth in section 5.04 of this Agreement;
- (uu) “**System Operations and Dispatch Agreement**” means the agreement to be entered into between the **Partnership** and **Hydro** in substantially the same form as described in the **PDA**;
- (vv) “**Taskinighp Power Corporation Financing Agreement**” means the agreement to be entered into between **Taskinighp Power Corporation** as borrower and **Hydro** as lender in substantially the same form as described in the **PDA**, in which it is defined as the TPC Financing Agreement;
- (ww) “**Tax Act**” means the *Income Tax Act* (Canada) as amended from time to time;
- (xx) “**Taxable Income**” and “**Tax Loss**”, in respect of any tax year means, respectively, the amount of income or loss of the **Partnership** for such period determined in accordance with the provisions of the **Tax Act** (including the amount of taxable capital gains or allowable capital losses, recapture of capital cost allowance or terminal loss, resulting from the disposition of each capital property of the **Partnership** as determined by the **General Partner** in accordance with the provisions of the **Tax Act**);

- (yy) “**Term**” has the meaning ascribed thereto in section 2.07 hereof;
- (zz) “**Unit**” means one of the units of the **Partnership** representing an interest in the **Partnership** and “**Units**” means all of the units of the **Partnership**;
- (aaa) “**Unit Certificate**” means the form of certificate issued by the **Limited Partnership** evidencing the number of **Units** owned by a **Partner** or any certificates issued in replacement thereof in accordance with the provisions of this **Agreement**;
- (bbb) “**Wuskwatim Generating Station**” means the proposed hydro-electric generating station forming 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;
- (ccc) “**Wuskwatim Project**” means the **Wuskwatim Generating Station** and all related works, excluding the **Wuskwatim Project Related Transmission Facilities**, but including, without limitation, all dams, dykes, channels, control structures, excavations, camps, storage areas, local roads and access road, to be located at Taskinigup Falls near Wuskwatim Lake which, if built, will contribute about 200 megawatts to the **Integrated Power System** through the **Wuskwatim Project Related Transmission Facilities**;
- (ddd) “**Wuskwatim Project Related Transmission Facilities**” means the proposed complex of transmission and communication related facilities to be constructed as part of the **Wuskwatim Transmission Project**, including without limitation all transmission lines, switching and transformer stations and the construction power line;
- (eee) “**Wuskwatim Transmission Project**” means **Hydro’s** proposed project to develop the **Wuskwatim Project Related Transmission Facilities** and all related works.

Interpretation

1.02 For all purposes of this **Agreement** except as otherwise expressly provided or unless the context otherwise requires:

- (a) headings are for convenience of reference only and do not form a part of this **Agreement**, nor are they intended to interpret, define or limit the scope, extent or intent of this **Agreement** or any provision hereof;
- (b) all references to currency herein are references to Canadian currency unless otherwise stated;
- (c) any reference to a statute shall include and shall be deemed to be a reference to such statute and the regulations made pursuant thereto, with amendments made thereto in force from time to time and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto;

- (d) any reference to any entity shall include and shall be deemed to be a reference to any entity that is a successor to such entity;
- (e) words importing the masculine gender include the feminine or neuter gender and words importing the singular include the plural and vice versa;
- (f) the word “including” shall mean “including without limitation” and “includes” shall mean “includes without limitation”;
- (g) all accounting terms not specifically defined herein shall be construed in accordance with **Generally Accepted Accounting Principles**.

ARTICLE II

THE PARTNERSHIP

Continuation of Partnership

2.01 The **General Partner** and the **Limited Partners** acknowledge and confirm that the **Partnership** was formed pursuant to the **Initial Agreement** and that this **Agreement** is an amendment to and a restatement of the terms of the **Initial Agreement**. The **General Partner** and the **Limited Partners** agree to continue the **Partnership** under the laws of the Province of Manitoba and the **General Partner** agrees to prepare, complete and file the requisite “Change in a Limited Partnership Form” required pursuant to The Business Names Registration Act, C.C.S.M. c. B110 and to do all things and to execute and deliver all such documents, instruments and assurances as may be necessary to qualify, continue and keep in good standing the **Partnership** as a limited partnership. The **General Partner** shall take all necessary actions on the basis of information available to it in order to maintain the status of the **Partnership** as a limited partnership.

Name of the Partnership

2.02 The **Partnership** shall carry on business under the name “Wuskwatim Power Limited Partnership” (or such other name or names as the **General Partner** may from time to time adopt if required to comply with laws of the jurisdictions in which the **Partnership** may conduct business). The **General Partner** shall notify each **Limited Partner** of any change in the name of the **Partnership** within 10 days of such change. The **General Partner** shall hold the **Partnership** out as an entity separate from any other **Person**.

Maintaining Status of Partnership

2.03 The **General Partner** shall be the sole general partner of the **Partnership**, and shall do all things and shall cause to be executed, amended and filed such certificates, declarations, registers, instruments and documents as may be required to reflect the constitution of the **Partnership** and to carry on the **Business** of the **Partnership**, including, without limitation, the maintaining of a **Record of Limited Partners** stating for each **Limited Partner** the information prescribed by The Business

Names Registration Act, C.C.S.M. c. B110. The **General Partner** and each **Limited Partner** shall execute and deliver as promptly as possible any document that may be necessary or desirable to accomplish the purposes of this **Agreement** or to give effect to the formation and continuation of the **Partnership** under any and all applicable laws. The **General Partner** shall take all necessary action to reflect the constitution of the **Partnership**, on the basis of information available to it, in order to maintain the status of the **Partnership** as a limited partnership under the laws of the Province of Manitoba and to maintain the **Partnership** in compliance with the laws of any other governing authority having jurisdiction over the **Partnership**. The **General Partner** covenants and agrees that:

- i) The **Partnership** will not carry on any business in any jurisdiction unless the **General Partner** has taken all steps which may be required by the laws of that jurisdiction for the **Limited Partners** to benefit from limited liability to the same extent that **Limited Partners** enjoy limited liability under the **Act**. The **Partnership** will not carry on business in any jurisdiction in which the laws do not recognize the liability of the **Limited Partners** to be limited unless, in the opinion of the **General Partner**, the risks associated with the possible absence of limited liability in that jurisdiction are not significant considering the relevant circumstances.
- ii) The **Partnership** will carry on business in a manner so as to ensure to the greatest extent possible the limited liability of the **Limited Partners**, and the **General Partner** will register the **Partnership** in other jurisdictions where the **General Partner** considers it appropriate to do so.

Fiscal Year

2.04 The **Fiscal Year** of the **Partnership** shall begin on the 1st day of April and shall end on the 31st day of March in each and every year or on such other date as the **Limited Partners** may determine by **Ordinary Resolution**.

Business of the Partnership

2.05 The business of the **Partnership** (the “**Business**”) is the completion of the planning, construction, ownership, maintenance and operation of the **Wuskwatim Project** and the sale of energy generated by it and any activities incidental or related thereto with a view to making a profit therefrom.

Registered Office and Mailing Address

2.06 The registered office and mailing address of the **Partnership** and the registered office and mailing address of the **General Partner** shall be **360 Portage Avenue, Winnipeg, MB R3C 0G8**. The **General Partner** may not change the registered office or mailing address of the **Partnership** without the consent of all **Limited Partners**.

Term

2.07 The term of the **Agreement** (the “**Term**”) shall be indefinite, unless the **Partnership** is dissolved in accordance with Article 10. For greater certainty, this **Agreement** is intended to preclude any **Partner** from dissolving the **Partnership** by giving notice to the other **Partners**, except in accordance with the provisions of Article 10.

Representations and Warranties of the General Partner

2.08 The **General Partner** represents and warrants to, and covenants with, each **Limited Partner** that:

- (a) the **Partnership** is a valid limited partnership, duly formed under the laws of the Province of Manitoba;
- (b) it is and shall continue to be a corporation incorporated and in good standing under the laws of the Province of Manitoba, or any other jurisdiction under which the **General Partner** may continue or under which a successor to the **General Partner** may be incorporated or continue;
- (c) it will maintain all registrations in any jurisdiction where the **Business** of the **Partnership** requires such registration necessary for the conduct of the **Business** and, subject to the successful completion of all necessary regulatory reviews, will have and will continue to have all licenses and permits necessary to carry on the **Business** as **General Partner**;
- (d) it has and will continue to have the capacity and corporate authority to act as the general partner of the **Partnership** and to perform its obligations under this **Agreement**, and such obligations do not and will not conflict with, nor do they or will they result in a breach of, its articles of incorporation, its by-laws, any resolutions of its directors or shareholders or any agreement to which it is a party or by which it is bound;
- (e) the entering into of this **Agreement** by the **General Partner**, and the performance of its obligations under this **Agreement**, do not and will not require the approval or consent of, or any notice to or filing with, any governmental authority except such approvals and consents as: (i) have been obtained on or before the date hereof; or (ii) will be obtained by the **General Partner** prior to such consents and approvals being required in order for the **General Partner** to carry out its duties and covenants hereunder;
- (f) it is not, and shall continue not to be, a non-resident of Canada within the meaning of the **Tax Act**;
- (g) the **General Partner** has taken and will take all necessary corporate action to authorize the execution, delivery and performance of this **Agreement**, and this **Agreement** constitutes a valid and binding obligation of the **General Partner**,

enforceable against the **General Partner** in accordance with the terms of this **Agreement**;

- (h) no authorization, consent or approval of, or filing with, or notice to, any **Person** is required in connection with the execution, delivery or performance of this **Agreement** by the **General Partner**, except such authorizations, consents and approvals as: (i) have been obtained on or before the date hereof; or (ii) will be obtained prior to such authorizations, consents and approvals being required in order for the **General Partner** to carry out its duties and covenants hereunder;
- (i) there are no actions, suits or proceedings pending or, to the knowledge of the **General Partner**, threatened, against or affecting the **General Partner** or any of its assets or undertaking at law or in equity or before any arbitrator or any governmental authority having jurisdiction which, if determined adversely, could affect adversely the **General Partner**, and the **General Partner** is not in default with respect to any law, regulation, order, writ, judgment, injunction or award of any competent governmental authority, court, arbitrator or instrumentality which would have such an effect.

Representations and Warranties of each Limited Partner

2.09 Each **Limited Partner** represents and warrants to each other **Limited Partner** and to the **General Partner** that it:

- (a) is not and shall continue not to be a “non-resident” of Canada within the meaning of the **Tax Act**;
- (b) is not and shall not become a “non-Canadian” within the meaning of the Investment Canada Act (Canada);
- (c) is legally competent to execute this **Agreement** and all other agreements contemplated hereby and to take all actions required pursuant hereto, and further certifies that all necessary approvals of directors, shareholders, partners, members or otherwise have been given;
- (d) shall promptly provide such evidence of its status as the **General Partner** may reasonably request; and
- (e) is and shall continue to be a corporation incorporated and in good standing under its jurisdiction of incorporation, which is Manitoba in the case of **Hydro** and **Taskinigahp Power Corporation**.

Covenant on Representations and Warranties

2.10 Each **Limited Partner** covenants and agrees that it will not transfer or purport to transfer its **Units** to any **Person** which would be unable to make the representations and warranties in section 2.09 and will not change its status such that the above representations would at any time be untrue.

Compliance with Laws

2.11 Each **Limited Partner** shall, on request by the **General Partner**, immediately execute all certificates, declarations, instruments and documents necessary to comply with any applicable law or regulation in regard to the formation, continuance, operation or dissolution of the **Partnership** or in connection with the qualification of the **Partnership** to carry on the **Business** or to own the **Partnership Assets**.

Limitation on the Authority of Limited Partners

2.12 No **Partner**, other than the **General Partner**, shall or shall be entitled to:

- (a) take part in the management of the **Business** or the **Partnership** or exercise any power in connection with that control or management or transact business on behalf of the **Partnership**;
- (b) execute any document, other than those signed in connection with the **Partners** voting on a resolution of the **Partners**, which binds or purports to bind any other **Partner**, the **General Partner** or the **Partnership**;
- (c) hold itself out as having the authority or power to bind any other **Partner**, the **General Partner** or the **Partnership**;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other **Partner**, **General Partner** or the **Partnership**;
- (e) bring any action for partition or sale or otherwise in connection with the **Partnership**, or any interest in any property of the **Partnership**, whether real, tangible or intangible, or file or register or permit to be filed, registered or remain undischarged any lien or charge in respect of any property of the **Partnership**;
- (f) compel or seek a partition or sale, judicial or otherwise, of any of the assets of the **Partnership** distributed or to be distributed to the **Partners** in kind in accordance with this **Agreement**;
- (g) bring any action for the dissolution of the **Partnership**; or
- (h) take any action that will jeopardize or eliminate the status of the **Partnership** as a limited partnership or a “Canadian partnership” for the purposes of the **Tax Act**.

Authority of Hydro

2.13 Notwithstanding the provisions of section 2.12 or any other provision of this **Agreement**, but subject always to the receipt of such approvals as may be required under the **PDA** for **Hydro** or any **Affiliate** of **Hydro** to enter into any agreements with the **Partnership** other than the **Hydro Service Agreements**, **Hydro** shall be entitled to perform all acts and do all things necessary or desirable

pursuant to the terms of any agreement between **Hydro** and the **Partnership**, including the **Hydro Service Agreements**, provided, however, that no such act or thing shall jeopardize or eliminate the status of the **Partnership** as a limited partnership or a “Canadian partnership” for the purposes of the **Tax Act**.

ARTICLE III

MANAGEMENT OF PARTNERSHIP

Authority of General Partner

3.01 The **General Partner**, subject to the terms of this **Agreement** and to all applicable laws, shall and is authorized to carry on the **Business** of the **Partnership**, with full power and authority to administer, manage, control and operate the **Business** of the **Partnership** and shall and is given all power and authority to do any act, take any proceeding, make any decision and execute and deliver any instrument, deed, agreement or document necessary for and incidental to carrying on the **Business** of the **Partnership** for and on behalf of and in the name of the **Partnership**. The **General Partner** shall have unlimited liability for the debts, liabilities, obligations and losses of the **Partnership** to the extent that they exceed the assets of the **Partnership**, as required by the **Act**.

Powers of General Partner

3.02 Without limiting the generality of section 3.01 and subject to the terms of this **Agreement**, the **General Partner**, acting reasonably, shall carry out the objects, purposes and all of the activities of the **Partnership** and shall manage the **Business** of the **Partnership** and shall have full power and authority for and on behalf of and in the name of the **Partnership** to:

- (a) provide overall management, financial and business planning as required in the operation of the **Business**;
- (b) negotiate, execute and perform all agreements which require execution by or on behalf of the **Partnership** involving matters or transactions with respect to the **Business**;
- (c) subject to any prior approval of the **Limited Partners** required pursuant to the terms of this **Agreement**, cause the **Partnership** to acquire, sell, transfer or otherwise dispose of, mortgage, pledge, encumber, hypothecate or exchange any or all of the **Partnership Assets**;
- (d) use the **Partnership Assets** (including, without limitation, cash on hand) for the purpose of furthering the **Business** on such terms as it sees fit, including, without limitation, the financing of the **Business**, the repayment of obligations of the **Partnership**, the conduct of the **Business** and the purchase or acquisition, as

Partnership Assets, of any other assets or interests in properties, as may be deemed appropriate in its sole discretion in connection with the **Partnership's** operations;

- (e) open and manage bank accounts in the name of the **Partnership** and spend the capital of the **Partnership** in the exercise of any right or power exercisable by the **General Partner** hereunder;
- (f) borrow funds in the name of the **Partnership** from time to time, including without limitation from the **General Partner** or any affiliate of the **General Partner** provided that the rate of interest and any other expenses relative to those borrowings will not, under any circumstances, exceed that which the Partnership could obtain from a Canadian chartered bank with respect to similar borrowings;
- (g) draw, make, execute and issue promissory notes, evidences of indebtedness and all other negotiable or non-negotiable instruments;
- (h) mortgage, charge, assign, hypothecate, pledge or otherwise create a security interest in all **Partnership Assets**;
- (i) subject to section 6.06, establish such reserves as shall be determined to be reasonable in connection with the operation and future needs of the **Business** in order to carry on prudently the **Business**;
- (j) see to the sound management of the **Partnership** and to manage, control and develop all the activities of the **Partnership** and take all measures necessary or appropriate for the **Business** of the **Partnership** or ancillary thereto;
- (k) maintain, improve, upgrade, expand, acquire or dispose of the **Partnership Assets** from time to time;
- (l) incur and pay all costs and expenses in connection with the **Partnership**;
- (m) allocate **Net Income** or **Net Losses** and distribute **Distributable Cash** to the **Partners** in accordance with the provisions of this **Agreement**;
- (n) employ, retain, engage or dismiss from employment, individuals, agents, representatives or professionals or other persons with the powers and duties upon the terms and for the compensation as in the discretion of the **General Partner** may be necessary or advisable in the carrying on of the **Business**;
- (o) engage agents to assist the **General Partner** to carry out its management obligations to the **Partnership** or subcontract administrative functions;
- (p) establish advisory committees to provide to it such advice on such matters as it deems appropriate from time to time;

- (q) invest cash assets of the **Partnership** that are not immediately required for the **Business** in investments which the **General Partner** considers appropriate;
- (r) act as attorney in fact or agent of the **Partnership** in disbursing and collecting moneys for the **Partnership** and in paying debts and fulfilling the obligations of the **Partnership** and handling and settling any claims of the **Partnership**;
- (s) commence or defend any action or proceeding in connection with the **Partnership**;
- (t) file returns or other documents required by any governmental or like authority;
- (u) make any election that may be made under the **Tax Act** or any other legislation;
- (v) purchase, lease or otherwise acquire equipment and premises in connection with the **Business**;
- (w) retain legal counsel, experts, advisors or consultants as the **General Partner** considers appropriate and rely upon the advice of such persons;
- (x) purchase policies of insurance, as it considers appropriate, for the **Business** and to insure against any liabilities or potential liabilities of the **General Partner**, **Limited Partners** and the **Partnership** that arise or may arise from this **Agreement** or in law or in equity, including, without limiting the generality of the foregoing, relating to personal injury or property damage;
- (y) execute and carry out the obligations of the **Limited Partnership** under the terms of the **PDA** and in such other agreements as are referred to in the **PDA** or as are otherwise necessary or desirable for the carrying on of the **Business**;
- (z) do anything that is in furtherance of or incidental to the **Business** or that is provided for in this **Agreement** and execute, acknowledge and deliver the documents necessary to effectuate any or all of the foregoing or otherwise in connection with the **Business**; and
- (aa) conduct business so that no **Persons** dealing with the **Partnership** will be required to enquire into the authority of the **General Partner** to do any act, take any proceeding, make any decision or execute and deliver any instrument, deed, agreement or document for or on behalf of or in the name of the **Partnership**. The **General Partner** will make all reasonable efforts to insert, and to cause agents of the **Partnership** to insert, the following clause in any contracts or agreements to which the **Partnership** is a party or by which it is bound (other than the **PDA**, the **Interconnection and Operating Agreement** and the **NCN Adverse Effects Agreement** provided that this exclusion from the requirement of inserting the following clause in these agreements shall not be construed as detracting from the limited liability of the **Limited Partners** hereunder or thereunder):

“The parties hereto acknowledge that Wuskwatim Power Limited Partnership is a limited partnership formed under the laws of the Province of Manitoba, a limited partner of which is only liable for any of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership and the limited partner’s pro rata share of any undistributed income. The parties hereto acknowledge that the obligations of Wuskwatim Power Limited Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners, their heirs, successors and assigns, and that resort shall only be had to the property of the Wuskwatim Power Limited Partnership or the property of its general partner. 5022649 Manitoba Ltd. is the sole general partner of the limited partnership.”

Covenants of General Partner

3.03 Subject to the provisions of this **Agreement**, the **General Partner** covenants that:

- (a) it will exercise the powers and discharge its duties under this **Agreement** honestly, in good faith, and in the best interests of the **Partnership**;
- (b) in carrying out its obligations under this **Agreement**, it will exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (c) it will maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the **Partnership**, the disclosure of which may adversely affect the interests of the **Partnership** or of a **Limited Partner**, except to the extent that disclosure is permitted as provided in this **Agreement**, is required by law, is required by virtue of the fact that **Hydro** is a Crown Corporation and must present annual financial statements for public review, or is in the best interests of the **Partnership**;
- (d) it shall not carry on any operations in addition to its activities as general partner of the **Partnership** and will devote its best efforts to, and for the benefit of, the **Partnership** and will devote as much time as is necessary for the conduct and prudent management of the activities and affairs of the **Partnership**; and
- (e) it will do all things and take all actions as may be necessary to ensure and protect, to the extent reasonably possible, the limited liability of the **Limited Partners**.

Conflict of Interest

3.04 Notwithstanding sections 3.03 or 3.09 or any other provision of this **Agreement**, the **Parties** acknowledge that there is an inherent conflict of interest in **Hydro** entering into the **Hydro Service Agreements** with the **Partnership**. The parties agree that the entering into of the

Hydro Service Agreements and the performance by the **General Partner** on behalf of the **Partnership** and **Hydro** of their respective obligations thereunder in accordance with their respective terms shall not constitute a breach by the **General Partner** of its obligations, fiduciary, contractual or otherwise, to the **Partnership**. It is further acknowledged and agreed that, in accordance with the provisions of the **Operations and Maintenance Agreement** and the **System Operations and Dispatch Agreement**, **Hydro**, in performing its functions under the said two agreements only, is entitled to act and may act at any time as **Hydro** in its sole discretion acting in good faith deems advisable in the best interests of the **Integrated Power System** regardless of whether a particular act, or actions, taken by **Hydro** in the best interests of the **Integrated Power System** may be detrimental to the interests of the **Partnership** or constitute a breach by **Hydro** of an agreement between it and the **Partnership**. The parties agree that neither **Hydro** nor the **General Partner** shall be liable to any **Partner** nor to the **Partnership** for any loss or damage of whatever nature the latter may incur as a consequence of the **General Partner** having entered into the **Operations and Maintenance Agreement** and the **System Operations and Dispatch Agreement** or of **Hydro**, acting in good faith, having acted in the best interests of the **Integrated Power System** as described in this section, subject to section 3.08 hereof and the review processes set out in Articles XVIII and XIX, respectively, of the **PDA**.

Other Activities of General Partner, Shareholder or Affiliates

3.05 Notwithstanding any other provision of this **Agreement**, it is expressly understood and agreed that shareholders and **Affiliates** of the **General Partner** may engage in businesses which may be similar to or competitive with those in which the **Partnership** is or might be engaged and neither the **General Partner** nor its shareholders and affiliates shall be required to offer or make available to the **Partnership** any business, other than the **Business**, or investment opportunity which its shareholders and **Affiliates** may acquire or be engaged in for their own account. The validity of a transaction, agreement or payment involving the **Partnership** and the **General Partner's** shareholders or an **Affiliate** is not affected by reason of the relationship between the **General Partner** and its shareholders or **Affiliates** nor by reason of the approval or lack thereof of the transaction, agreement or payment by the directors of the **General Partner**, all or some of whom may be involved personally or as officers or directors of, or otherwise interested in or related to, the **General Partner's** shareholders or **Affiliates**. Subject always to the receipt of such approvals as may be required under section 2.19 of the **PDA** for **Hydro** or any **Affiliate** of **Hydro** to enter into any agreements with the **Partnership** (other than the **Hydro Service Agreements**), the **General Partner** may engage or retain its shareholders or **Affiliates** on behalf of the **Partnership** to provide goods or services to the **Partnership** and may, in its discretion, engage other **Persons** interested in or companies owned by, associated with or affiliated with the **General Partner**, to render on behalf of the **General Partner**, part or all of such generalized and specialized management functions or administrative services as are reasonably required to accomplish the **Business** of the **Partnership**. This section 3.05 is not intended to detract from or limit the fiduciary obligations of the **General Partner** to the **Partnership** and shall not be deemed to do so.

Title to Partnership Assets

3.06 Title to the **Partnership Assets** shall be deemed to be owned by the **Partnership** as an entirety, and no **Partner** individually shall have any ownership interest in the assets of the **Partnership** or any portion thereof. Title to any or all of the **Partnership's** assets shall be held in the name of the **General Partner** for the benefit of the **Partnership** or in such other names as the **General Partner** may determine from time to time. The **General Partner** declares and warrants that any assets of the **Partnership** of which legal title is held in the name of the **General Partner** shall be held by the **General Partner** as agent of the **Partnership** for the use and benefit of the **Partnership** in accordance with the provisions of this **Agreement**. All of the assets of the **Partnership** shall be recorded as the property of the **Partnership** on its books and records, irrespective of the name in which legal title to such assets is held.

Expenses of the General Partner

3.07 The **Partnership** shall be directly responsible for the payment of all **Allowable Operating Expenses** and shall reimburse the **General Partner** for them, to the extent that they are not otherwise recoverable from the revenues of the **Business**, on a monthly basis, or on any other basis as the **General Partner** may determine in its sole and complete discretion, provided that the **General Partner** is not in default of its duties in connection with such expenses.

Limitation of Liability

3.08 The **General Partner** and its officers, directors, shareholders, employees, agents and **Affiliates** shall not be liable to a **Limited Partner** for any act or omission that does not constitute actual fraud, gross negligence or willful misconduct, if the **General Partner** or the **Person** acted in good faith and in a manner the **General Partner**, or the **Person**, believed to be in the interests of the **Partnership** or not opposed to the interests of the **Partnership** or pursuant to section 3.04. The **General Partner** shall indemnify the **Partnership** and the **Limited Partners** for any costs, damages, liabilities or expenses (including legal fees and expenses) suffered or incurred by the **Partnership** or the **Limited Partners** for an act or omission other than in the circumstances where the **General Partner** is excluded from liability in accordance with the immediately preceding sentence or in circumstances wherein **Hydro**, its subsidiaries and employees are either exempt from liability, or liability is limited (in which instances no more than the amounts determined through application of the sections in question shall be paid), pursuant to the provisions of sections 4(4), 13, 23(4), 24(2), 24(3) and 25(5) of the *Hydro Act*, R.S.M. 1987, c. H190 and amendments thereto (in which instances no more than the amounts determined through application of the sections in question shall be paid).

Indemnity

3.09 The **Partnership** shall indemnify the **General Partner** and its officers, directors, shareholders, employees, agents and **Affiliates** for any costs, damages, liabilities or expenses (including legal fees and expenses) suffered or incurred by them arising out of or incidental to the furtherance of the **Business**, except where the **General Partner** is not entitled to indemnity by

application of section 3.08 hereof. Nothing in this provision is intended to detract from the limited liability to which the **Limited Partners** are entitled hereunder and under the **Act**.

Limited Liability of Limited Partners

3.10 Subject to the **Act** and the applicable legislation of any other jurisdiction in which the **Partnership** carries on business, and subject further to any act taken or thing done by a **Limited Partner** contrary to the provisions of this **Agreement**, the liability of each **Limited Partner** for the debts, liabilities and obligations of the **Partnership** is limited to the **Limited Partner's Capital Contribution**, plus the **Limited Partner's pro rata** share of any undistributed income of the **Partnership**. Where **Limited Partners** have received the return of all or part of their **Capital Contribution**, the **Limited Partners** shall be liable to the **Partnership's** creditors for any amount, not in excess of the amount returned with interest, necessary to discharge the liabilities of the **Partnership** to all creditors who extended credit or whose claims otherwise arose before the return of the **Capital Contribution**. The **General Partner** will operate the **Partnership** to ensure to the greatest extent possible the limited liability of the **Limited Partners** and will indemnify and hold harmless each **Limited Partner** (including former **Limited Partners**) for all costs, expenses, damages or liabilities suffered or incurred by the **Limited Partner** if the limited liability of that **Limited Partner** is lost, but only if that **Limited Partner's** limited liability is lost as a result of the gross negligence, wilful misconduct or fraud of the **General Partner** in performing its duties and obligations under this **Agreement**. Each **Limited Partner** (the "**Breaching Limited Partner**") will indemnify and hold harmless each of the other **Limited Partners** (including former **Limited Partners**) for all costs, expenses, damages or liabilities suffered or incurred by any such other **Limited Partner** if the limited liability of such other **Limited Partner** is lost due to an act or omission of the **Breaching Limited Partner** that constitutes a breach of this **Agreement**, gross negligence, wilful misconduct or fraud.

Power of Attorney

3.11 In consideration of the sum of \$10.00, the receipt and sufficiency of which is hereby acknowledged, each **Limited Partner** hereby irrevocably and unconditionally nominates, constitutes and appoints the **General Partner** with full power of substitution, as its true and lawful attorney and agent with full power and authority in its name, place and stead and for its use and benefit to do the following, namely:

- (a) make, execute, swear to, sign, acknowledge, deliver and file, including filing for recording at the appropriate public offices, as, when and where required, any and all of the following:
 - (i) this **Agreement** and all declarations and other instruments necessary to form, qualify or continue and keep in good standing the **Partnership** as a limited partnership under the laws of the Province of Manitoba and any other jurisdiction in which any such documents may be required or desirable;

- (ii) all instruments, declarations and certificates necessary to reflect any amendment to this **Agreement** (subject to such approvals as may be required hereunder) or to the constitution of the **Partnership**; and
 - (iii) all conveyances, agreements and other instruments necessary or desirable to reflect the dissolution and termination of the **Partnership** and the cancellation of any certificates or declarations, subject always to the provisions of this **Agreement**, including Article 10 hereof;
- (b) execute and file with any government body or instrumentality thereof of the Government of Canada or a province in Canada or any other governmental authority having jurisdiction any documents necessary to be filed in connection with the **Business**, property, assets and undertaking of the **Partnership**;
 - (c) execute and deliver this **Agreement** and any amendments to it approved as required under this **Agreement**;
 - (d) execute and deliver all such other documents or instruments on behalf of and in the name of the **Partnership** and/or the **Limited Partners** as may be deemed necessary or desirable by the **General Partner** to carry out fully the provisions of this **Agreement** and the provisions of any agreements to which it is a party;
 - (e) prepare, execute and file all income tax, sales tax and other tax forms, returns and elections which the **Partnership** is required to file or which are deemed desirable to be filed by the **General Partner**; and
 - (f) prepare and execute assignments and transfers of **Units** when necessary or desirable in accordance with the terms of this **Agreement**.

To evidence the foregoing, each **Limited Partner**, in executing a **Subscription Agreement** or in executing the form of transfer of a **Unit**, will have executed a power of attorney containing substantially the same powers set forth above. Each **Limited Partner** hereby declares that the power of attorney granted herein is irrevocable, is a power coupled with an interest, will survive the insolvency of a **Limited Partner** and will survive the assignment (to the extent of the **Limited Partner's** obligations hereunder and with respect to such actions as are necessary to effect the substitution of the assignee as a limited partner in the **Partnership**) by the **Limited Partner** of the whole or any part of the interest of the **Limited Partner** in the **Partnership** and extends to the heirs, executors, administrators, successors and assigns of the **Limited Partner** and may be exercised by the **General Partner** executing on behalf of each **Limited Partner** any instrument with a single signature as attorney and agent for all of them.

This power of attorney shall not revoke any previous general or continuing power of attorney granted by the **Limited Partner** and will not itself be revoked by any future grant of a general or continuing power of attorney by the **Limited Partner**.

This power of attorney shall not be affected by the withdrawal, resignation or deemed resignation of the **General Partner** as general partner for the **Partnership** and, upon substitution therefore of a

replacement **General Partner**, may be exercised by such replacement **General Partner** as if it were an original party to this **Agreement**.

Each **Limited Partner** agrees to be bound by any representations and actions made or taken in good faith by the **General Partner** pursuant to such power of attorney in accordance with the terms hereof, and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the **General Partner** taken in good faith under such power of attorney.

Restrictions on Authority of General Partner

3.12 The **General Partner's** powers and authorities do not extend to any powers, actions or authority enumerated in Section 9.11 unless and until the requisite **Special Resolution** is passed by the applicable **Partners**. The **General Partner** will not:

- (a) commingle the funds of the **Partnership** with its own funds or the funds of any of its **Affiliates** or associates or any other **Person**;
- (b) dissolve the affairs of the **Partnership**, except in accordance with the provisions of Article 10;
- (c) sell, exchange or otherwise dispose of all or substantially all of the assets of the **Partnership**;
- (d) except in accordance with Article 4, assign, transfer or otherwise dispose of its entire interest as **General Partner** without approval of the **Limited Partners**; and
- (e) enter into any agreement on behalf of the **Partnership** with **Hydro** or an **Affiliate** of **Hydro** that requires prior approval in accordance with section 2.19 of the **PDA** until such approval is obtained.

ARTICLE IV

WITHDRAWAL OR REMOVAL OF GENERAL PARTNER

Withdrawal of General Partner

4.01 The **General Partner** may withdraw if such withdrawal is approved by **Special Resolution** of the **Limited Partners**.

Deemed Resignation of General Partner

4.02 The **General Partner** shall be deemed to have resigned as the general partner of the **Partnership** in the event of the bankruptcy, dissolution, liquidation or winding-up of the **General Partner** (or the commencement of any act or proceeding in connection therewith which is not contested in good faith by the **General Partner**) or by the appointment by a court of competent jurisdiction of a trustee, receiver or manager of the affairs of all or substantially all of the properties of the **General Partner**. The **General Partner** shall forthwith advise the **Limited Partners** by written notice of the occurrence of any event referred to in this section 4.02. In such circumstances, the **Limited Partners** shall have the right by **Ordinary Resolution**, after consultation, to designate a successor **General Partner**.

No Removal of General Partner

4.03 The **General Partner** may not be removed by the **Partners** as the **General Partner** except by **Special Resolution**. In such circumstances, the **Limited Partners**, after consultation, shall have the right by **Ordinary Resolution** to designate a successor general partner.

Effect of Withdrawal, Deemed Resignation or Removal of General Partner

4.04 In the event of the withdrawal, deemed resignation or the removal of the **General Partner**, as provided herein, the **General Partner** shall cease to be entitled to any allocation of **Net Income** or **Net Loss** provided for herein upon the effective date of such resignation, deemed resignation or removal, but shall be entitled to its share of any allocation of **Net Income** or **Net Loss** up to such date. The withdrawing, resigning or removed **General Partner** shall be, and shall remain liable for all obligations and liabilities incurred by the **Partnership** for which the **General Partner** was liable before such withdrawal, deemed resignation or removal became effective.

Successor General Partner

4.05 A **Special Resolution** recording the withdrawal or removal of the **General Partner** may provide for the nomination and appointment of a successor **General Partner**, and the resolution in that circumstance shall become effective only on the admission of the successor **General Partner** to the **Partnership** in accordance with the provisions of this **Agreement**. Upon the occurrence of the events described in this paragraph, the successor **General Partner** shall continue the **Business** of the **Partnership** without dissolution.

On the admission of a successor **General Partner** to the **Partnership** on the resignation or removal of the **General Partner**, the resigning or retiring **General Partner** will do all things and take all steps to transfer the administration, management, control and operation of the **Business** of the **Partnership** and the books, records and accounts of the **Partnership** to the successor **General Partner** and will execute and deliver all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer in a timely fashion.

On the resignation or removal of the **General Partner** and the admission of a successor **General Partner**, the resigning, or retiring, **General Partner**, at the cost of the **Partnership**, will transfer title to the **Partnership**'s property to such successor **General Partner** and will execute and deliver all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer in a timely fashion.

On the resignation or removal of the **General Partner**, the **Partnership** will release and hold harmless the **General Partner** resigning or being removed from any costs, expenses, damages or liabilities suffered or incurred by the **General Partner** as a result of or arising out of events which occur in relation to the **Partnership** after such resignation or removal.

A successor **General Partner** shall not be a "non-resident" of Canada within the meaning of the *Tax Act* and will become a party to this **Agreement** and will agree to be bound by all of the provisions of

this **Agreement** and to assume the obligations, duties and liabilities of the **General Partner** from the date the new **General Partner** becomes a party to this **Agreement**.

General Partner's Interest

4.06 The **General Partner** shall transfer all, but not less than all, of its **General Partner** interest in the **Partnership** to a successor **General Partner** appointed in accordance with the provisions of this **Agreement** or otherwise with the unanimous consent of the **Limited Partners**, provided in each case that any transferee assumes the rights and duties of the **General Partner** and agrees to be bound by the provisions of this **Agreement**.

Continuity of Partnership

4.07 In the event of the bankruptcy, insolvency, dissolution, liquidation or winding up of the **General Partner**, the **Partnership** shall not terminate but shall be continued by the then newly appointed or admitted **General Partner**.

ARTICLE V

THE UNITS

Number of Units

5.01 Subject to this **Agreement**, the **Partnership** shall be divided into **Units**. Subject to section 5.02, the **Units** may be sub-divided into such classes as the **General Partner** may determine are necessary or appropriate provided that the prior consent is obtained from any **Limited Partner** owning **Units** at the time of such proposed sub-division. The **Partnership** shall be authorized to issue an unlimited number of **Units**. **Units** may be issued in fractions.

Nature of Unit

5.02 Each issued and outstanding **Unit** shall be equal to each other **Unit** with respect to voting rights, the right to receive distributions from the **Partnership** and otherwise. No **Unit** shall have any preference or right in any circumstances over any other **Unit**. Each **Unit** carries the right to one vote in respect of all matters to be decided by the **Limited Partners**. Holders of fractional **Units** shall be entitled to vote as hereinafter provided. **Units** have no preference, exchange, preemptive or redemption rights. Only registered holders of **Units** will be entitled to vote or receive distributions or otherwise to exercise or enjoy the rights of **Limited Partners**.

Unit Certificates

5.03 **Unit Certificates** shall be in such form as is from time to time approved by the **General Partner** and shall be signed by the **General Partner** for and on behalf of the **Partnership**.

Unit Subscription

5.04 For each **Unit** subscribed for a **Person** shall pay to the **Partnership** the sum of \$1,000 per **Unit**. The **General Partner** shall subscribe for a nominal number of **Units**, not to exceed 0.01% of the issued **Units**. Unless the Parties otherwise agree, subscriptions for **Units** shall be accepted by the **General Partner** only if they are in compliance with this **Agreement** and the **PDA**. The **General Partner** shall subscribe for, and maintain at all times while it is the general partner of the **Partnership**, such number of **Units** equal to 0.01% of the issued **Units**.

Receipt by Limited Partner

5.05 The receipt of any money, securities or other property from the **Partnership** by a **Person** in whose name any **Units** are recorded, or if such **Units** are recorded in the names of more than one **Person**, the receipt thereof by any one of such **Persons**, or by the duly authorized agent of any such **Person** in that regard, shall be a sufficient and proper discharge for that amount of money, securities and other property payable or deliverable in respect of such **Units**.

Registrar and Transfer Agent

5.06 The **General Partner**, or such other **Person** as may be appointed from time to time by the **General Partner**, shall act as **Registrar and Transfer Agent** of the **Partnership** and shall maintain such books as are necessary to record the names and addresses of the **Limited Partners**, the number of **Units** held by each **Limited Partner** and particulars of the transfer of **Units**. The **General Partner** shall cause the **Registrar and Transfer Agent** to perform all duties usually performed by a registrar and transfer agent of certificates of shares in a corporation except as the same may be modified by reason of the nature of the **Units**.

For so long as the **General Partner** shall be **Registrar and Transfer Agent**, the register of **Limited Partners** will be kept by the **General Partner** at its registered office.

Inspection of Records

5.07 The **General Partner** shall cause the **Registrar and Transfer Agent** to make the records relating to the **Limited Partners** available for inspection by any **Limited Partner**, or his agent duly authorized in writing, at the expense of such **Limited Partner**. A copy of the register of the **Limited Partners** shall be provided to any **Limited Partner** on forty-eight [48] hours notice in writing to the **Registrar and Transfer Agent**, at the expense of the **Limited Partner** requesting same.

Transfer of Units

5.08 **Partners** shall not transfer any **Units** owned by them without the unanimous consent of all **Limited Partners**, which consent can be unreasonably withheld except, no consent shall be required in the case of transfers of **Units** between **Hydro** and **Taskinigahp Power Corporation** and transfers of **Units** from the **General Partner** to a successor **General Partner** appointed in accordance with the provisions of this **Agreement**, and the refusal to consent must be reasonable in the case of transfers from **Taskinigahp Power Corporation** to another wholly owned subsidiary

of NCN or from **Hydro** to another entity wholly owned by **Hydro**. The **General Partner** shall effect any transfer of **Units** required pursuant to the exercise of any sale or purchase right conferred upon **Hydro** or Taskinigahp Power Corporation, as the case may be, in the **Taskinigahp Power Corporation Financing Agreement**.

Restriction on Pledge of Unit(s)

5.09 Save and except for the provisions of the **NCN Financing Agreement**, the **Taskinigahp Power Corporation Financing Agreement** and the **Revenue Advances Consolidation Agreement** as described in the **PDA**, **Limited Partners** shall not pledge, encumber or assign their **Units** or their interests in their respective capital accounts without the unanimous consent of all **Limited Partners**, which consent can be unreasonably withheld.

Parties Not Bound To See To Trust or Equity

5.10 Except where specific provision has been made therefore in this **Agreement** or a related agreement, including such related finance agreements as may be entered into between **Hydro** and **NCN** and/or **Taskinigahp Power Corporation**, the **Registrar and Transfer Agent** may not be bound to see to the execution of any trust, express, implied or constructive, or any charge, pledge or equity to which any **Unit** or any interest therein is subject or to ascertain or inquire whether any sale or transfer of any such **Unit** or interest therein by a **Limited Partner** or his personal representative is authorized by such trust, charge, pledge or equity, or to recognize any **Person** having any interest therein except for the **Person** or **Persons** recorded as such **Limited Partner**.

Insolvency or Bankruptcy

5.11 In the event of the incapacity, death, insolvency or bankruptcy of a **Limited Partner**, the remaining **Limited Partners** shall have the right, if they so elect, to purchase the **Units** of the **Limited Partner** so incapacitated, deceased, insolvent or bankrupt for a price equal to the fair market value of such **Units** less the amount of any outstanding indebtedness in respect of such **Units** which would have to be paid to obtain the full release of any security interest in such **Units** and after making such adjustments as are reasonable on account of the limited market for the sale of the **Units** and the fact that such sale, in some circumstances, would amount only to a disposition of the minority interest in the **Partnership**, all as determined by an independent third party with expertise in the generation and sale of electricity at the time of disposition.

Lost Unit Certificates

5.12 Where a **Limited Partner** claims that the **Unit Certificate** for its **Units** has been defaced, lost, apparently destroyed or wrongly taken, the **Registrar and Transfer Agent** shall cause a new **Unit Certificate** to be issued, provided that the **Limited Partner** files with the **Registrar and Transfer Agent** a proof of loss in a form satisfactory to the **General Partner** to protect the **Registrar and Transfer Agent** and the **Partnership** from any claimants producing the lost **Unit Certificate** and provided further that the **Limited Partner** satisfies all other reasonable requirements imposed by the **Registrar and Transfer Agent**.

ARTICLE VI

CONTRIBUTIONS, ALLOCATIONS AND DISTRIBUTIONS

Capital Contribution

6.01 The capital of the **Partnership** shall be the aggregate amount of the **Capital Contributions** made by all of the **Partners** from time to time.

Separate Capital Accounts

6.02 There shall be established on the books of the **Partnership** a separate capital account for each **Partner** and each **Partner** shall be credited with the amount of its **Capital Contribution** to the **Partnership**. The capital account of each **Partner** shall be increased by the **Partner's** share of **Net Income** for each **Fiscal Year** and any additional **Capital Contributions**, and shall be decreased by distributions to the **Partner** and **Partner's** share of **Net Loss** for any **Fiscal Year**. No **Partner** shall be entitled to withdraw any part of its capital account or to receive any distribution on return of its **Capital Contribution** except as provided in this **Agreement**. The interest of a **Partner** in the **Partnership** shall not terminate by reason of a negative balance in its capital account.

Additional Capital Contributions

6.03 The **General Partner** shall be entitled to call upon the **Partners** to make additional cash contributions by way of capital investment in the **Partnership** in pro rata amounts in accordance with the number of **Units** owned by each **Partner** on the date of such call. In determining whether to make a call and the amount of the cash contribution required of the **Partners** in respect of that call the **General Partner** shall, acting honestly and in good faith, consider:

- (i) the best interests of the **Partnership**;
- (ii) the effect of the call and the amount of the cash contribution on each of the **Limited Partners** including the extent to which the call may dilute the interest of a **Partner**;
- (iii) the current and desired **Debt Ratio** of the **Partnership**;
- (iv) the amount of reserves currently being maintained by the **General Partner** for the **Partnership**, if any and the desired reserves;
- (v) the cost of borrowing funds in the name of the **Partnership**; and
- (vi) the amount of **Distributable Cash** of the **Partnership**, if any.

After considering the factors in clauses (i) to (vi), the **General Partner** shall decide whether to call for such additional cash contributions as the **General Partner**, acting reasonably, determines are necessary or desirable for the operation of the **Business**, including, without limiting the

generality of the foregoing, cash for the costs of operating and maintaining the **Wuskwatim Project**.

If each **Partner** contributes its pro rata amount of any cash contribution demanded of it by the **General Partner** within 90 days of such demand having been received, such cash contribution will be allocated to each **Partner's** respective capital account and each **Partner** shall be issued additional **Units** in the **Partnership** in a number calculated by taking the amount contributed by such **Partner** within the 90-day period pursuant to the demand by the **General Partner** and dividing it by \$1,000.00.

In the event that any **Partner** (the "**Defaulting Partner**") does not contribute the full amount demanded of it by the **General Partner** within 90 days of receiving such demand (provided that the amount demanded of such **Defaulting Partner** does not exceed an amount calculated by multiplying the aggregate amount demanded of all **Partners** by a fraction, the numerator of which is the number of **Units** owned by the **Defaulting Partner** prior to the demand, and the denominator of which is the total number of issued **Units** in the **Partnership** prior to the demand), then each of the **Partners** (including the **Defaulting Partner**) shall be issued additional **Units** in the **Partnership** in a number calculated by taking the amount contributed by such **Partner** within the 90-day period pursuant to the demand by the **General Partner** and dividing it by \$1,000.00.

Hydro agrees that it shall ensure that at all times while there is one or more **Limited Partners** other than **Hydro** and the **General Partner** is a subsidiary or **Affiliate** of **Hydro**, **Hydro** shall cause the **General Partner** to make all of its **Capital Contributions** pursuant to any demand hereunder so as to maintain the **General Partner's** proportionate ownership of **Units** at a percentage not less than 0.01%.

No Interest Payable

6.04 No interest shall be payable to any **Partner** on account of its **Capital Contribution** by the **Partnership**.

Debt Ratio

6.05 Subject to section 6.03, the **General Partner** shall maintain the **Debt Ratio** of the **Partnership** at the percentage the **General Partner**, acting reasonably, honestly and in good faith considers advisable. The **Debt Ratio** shall be calculated to the nearest full percentage point when decisions regarding the distribution of **Distributable Cash** and regarding cash calls are to be made. The amount of the reserves as determined in accordance with section 6.06 shall not be included in calculating the **Debt Ratio**.

Reserves

6.06 The **General Partner** may cause the **Partnership** to establish reserves for capital expenditures, decommissioning costs and other legitimate business purposes and may set aside such funds for reserves as the **General Partner** shall determine to be reasonable in connection with the current operation and the future needs of the **Partnership** in order to carry on prudently

the **Business**. The **General Partner** shall have the right to establish reserves as long as the **General Partner** acts reasonably and in a manner that is consistent with prudent business practices having regard to the purposes for which the reserves were established. Funds set aside as reserves shall not be considered to be a cash distribution. Reserves will be funded only out of the income or capital of the **Partnership** and not by calls for additional cash contributions. Once reserves are established, the **General Partner** need not draw on reserves prior to making calls upon **Partners** for additional cash contributions except where expenditures are required for which the reserves were established. For greater certainty, the **General Partner** shall ensure that income used to fund reserves is allocated as between the **Partners** based on their respective pro rata shares of the **Units** of the **Partnership**. The **General Partner** shall provide the **Partners** within 120 days of the end of each **Fiscal Year** with a written report on how the amount of the reserves was determined, which shall include an estimate of capital expenditures and other costs. The reasonableness of the amount of reserves being held by the **Partnership** may be reviewed in the manner set forth in Article XX of the PDA.

Determination of Net Income and Net Loss

6.07 The **Partnership** shall calculate **Net Income** and **Net Loss** according to the application of **Hydro's** accounting policies and practices, in effect from time to time, in accordance with **Generally Accepted Accounting Principles** as evidenced by an unqualified audit opinion. In the event that the application of **Hydro's** accounting policies and practices results in an inability to get an unqualified audit opinion, then the policies and practices in question will not be followed for the **Partnership**.

Allocation of Net Income and Net Loss

6.08 **Net Income** and **Net Loss** shall be allocated between the **General Partner** and the **Limited Partners** pro rata in accordance with the number of **Units** owned by each of them as of the close of business on the last day of the **Fiscal Year** as determined by the **General Partner** from time to time.

Allocation of Taxable Income and Tax Loss

6.09 In respect of each **Fiscal Year**, **Taxable Income**, **Tax Losses** and any tax credits due to the **Partnership** shall be allocated among the **Partners** in the same proportion as the allocation of **Net Income** and **Net Loss** as determined in accordance with section 6.08.

Distributions

6.10 Within 120 days of the end of each **Fiscal Year**, the **General Partner** shall provide the **Partners** with a written report showing the **General Partner's** determination of **EBITDA** and **Distributable Cash** together with its supporting calculations thereof in reasonable detail. The written report shall include disclosure of the amount of cash held by the **Partnership** and the deductions therefrom in accordance with the definition of **Distributable Cash** to arrive at the **Distributable Cash** for the relevant period. Subject to sections 6.05 and 6.06, the **General Partner** shall distribute to the **Partners** the amount of **Distributable Cash** shown on such report

within 10 business days of having provided such statement to the **Partners**. Without limiting the **General Partner's** obligation to report on, and distribute, **Distributable Cash** not less than once annually as herein contemplated, the **General Partner** may calculate the amount of and make a distribution thereof in such amounts and at such other time or times as the **General Partner** may determine from time to time, subject always to sections 6.05 and 6.06

Each **Partner** shall receive its pro rata share of distributions of **Distributable Cash** made by the **General Partner**, calculated as the amount determined by multiplying the total amount of the distribution by a fraction, in which the numerator is the number of **Units** owned by the **Partner** on the last day of the period for which such distribution is made and the denominator is the total number of **Units** owned by all **Partners** on the same date. Distributions shall not be made subject to any withholding taxes except as may be required by law.

Distributions payable pursuant to this provision will be made by electronic transfer of funds and, in the event of the failure of electronic payment methods, by cheque. Any payment by the **General Partner** to a **Partner** pursuant to this **Agreement** will be deemed to have been made upon the date of the electronic withdrawal of funds from the **General Partner's** bank account or upon the date the cheque clears the **General Partner's** bank account. Upon such payment, the **General Partner** will be discharged from all liability to the **Partner** in respect of such payment; provided, however, that if the electronic payment fails to deposit funds in a **Partner's** bank account or a cheque is lost or destroyed, then, upon the presentation of evidence satisfactory to the **General Partner** of such failure or loss, together with such indemnity as the **General Partner** may reasonably require, the **General Partner** will make a further electronic transfer or issue a replacement cheque to the **Partner**.

Adjustments

6.11 Any financial statements prepared and certified by the auditors of the **Partnership** as provided in this **Agreement** shall be final, binding and conclusive among the **Partners**, provided that any error or omission therein of which notice is given by any **Partner** to the **General Partner** within 180 days after the receipt of a copy thereof by such **Partner** shall be rectified and all proper adjustments made.

Return of Capital

6.12 The **Partners** shall not be entitled to a return of all or a portion of their **Capital Contributions** except as determined by the **General Partner**.

ARTICLE VII

BOOKS, RECORDS AND FINANCIAL INFORMATION

Books and Records

7.01 The **General Partner** will keep and maintain, or cause to be kept and maintained on behalf of the **Partnership** at its principal place of business, full, complete and accurate books of account and records of the business and affairs of the **Partnership** which will, without limitation, include:

- (a) capital accounts for the **Partners**;
- (b) **Capital Contributions** of the **Partners**;
- (c) a register to record the names and addresses of the **Partners**, the number of **Units** held by each **Partner** and the particulars of registration and assignment of **Units**;
- (d) a copy of this **Agreement** and any amendments to it; and
- (e) a record of all payments made to Taskinigahp Trust.

Inspection by Limited Partners

7.02 Each **Limited Partner** and the duly authorized representative of each **Limited Partner** shall have the right, at any reasonable time during regular business hours and without charge, to obtain from the **General Partner**:

- (a) a current list of the name and last known business or mailing address of each **Partner**;
- (b) a copy of this **Agreement** and the **Declaration** and all amendments to either of them, together with executed copies of any Powers of Attorney pursuant to which this **Agreement**, and all amendments to it, have been executed;
- (c) true and full information regarding the amount of cash and the description and statement of any other property and services contributed by each **Partner** and which each **Partner** has agreed to contribute in the future and the date on which each **Partner** became a **Partner**;
- (d) the **Record of Limited Partners**;
- (e) copies of all minutes of meetings of the **Partners** and all resolutions in writing of the **Partners** in lieu of meetings; and
- (f) any other information regarding the affairs of the **Partnership** as is just and reasonable.

Financial Information

7.03 The **General Partner**, or its agent in that behalf, shall be responsible for the preparation and maintenance of internal financial records and retaining auditors with respect to the preparation of annual **Financial Statements** of the **Partnership** at the end of each **Fiscal Year**. Within five days after the receipt of audited **Financial Statements**, the **General Partner** will forward to each **Partner** appearing in the register as a **Partner** at the end of the **Fiscal Year** an annual report for the **Fiscal Year** containing:

- (a) **Financial Statements** for the **Partnership** as at the end of the **Fiscal Year** with comparative **Financial Statements** as at the end of, and for the immediately preceding **Fiscal Year**;
- (b) a report of the auditor on the **Financial Statements**;
- (c) a report on allocations and distributions to **Partners**;
- (d) the amount of reserves being maintained by the **General Partner** for the **Partnership**, and each **Partner's** allocation of such reserves;
- (e) the current **Debt Ratio**; and
- (f) any other information as is material to the **Business**, in the opinion of the **General Partner** (including any management letter).

The **General Partner** shall cause unaudited, monthly financial statements (also including year-to-date financial information), together with a monthly report providing month-end and year-to-date information in respect of the matters outlined in clauses (c) to (e) above) to be prepared within fifteen [15] days of the end of each month and shall forward copies of them to each **Limited Partner** appearing in the **Record of Limited Partners** as a limited partner at the end of the month to which they relate.

No later than 120 days after the end of each **Fiscal Year** of the **Partnership**, **Financial Statements** shall be prepared and certified by the auditors of the **Partnership**, for and as of the end of such **Fiscal Year**, and such **Financial Statements** shall show the assets and the liabilities of the **Partnership**, all incomes and revenues received and receivable, and all expenses, costs, and charges incurred and paid or payable by the **Partnership** in respect of such **Fiscal Year**, with the resulting **Net Income** or **Net Loss** of the **Partnership** in respect of such **Fiscal Year**, and shall also show the amounts standing to the credit of each of the **Partners** in respect of its capital account and separately in respect of the **Net Income** and **Net Loss** of the **Partnership** which has been allocated to each such **Partner** (which amount shall be set out in an account for such **Partner** called its "current account"), all in accordance with the provisions contained in this **Agreement**. The auditors of the **Partnership** shall be the auditors of **Hydro**.

The cost of preparing all such reports shall be at the **Partnership's** expense. Subject to section 7.04, each **Partner** shall be solely responsible for filing its income tax returns and reporting its share of the **Partnership's Taxable Income or Tax Loss**, as the case may be.

In addition to the foregoing reporting, the **General Partner** agrees to provide to each **Limited Partner** copies of the written statements provided monthly by **Hydro** to the **Partnership** in accordance with Section 5.13 of the **Project Financing Agreement**, copies of any notices and statements provided by **Hydro** to the **Partnership** pursuant to the **Project Financing Agreement**, the Access Road User Easement as described in the **PDA**, the Transmission Lease as described in the **PDA** and copies of such other business and financial information as the **General Partner** determines to be reasonable in the circumstances with the objective of keeping the **Limited Partners** informed as to matters of a material nature affecting the **Business** of the **Partnership**.

Tax Matters

7.04 The **Partnership** shall be treated as a limited partnership for federal, provincial and municipal income tax and other tax purposes. The **General Partner** shall prepare, or cause to be prepared, any federal, provincial and municipal tax or information returns required to be filed by the **Partnership** and all financial statements required by each **Partner** to enable the filing of any tax or information return which is required to be filed by such **Partner**.

ARTICLE VIII

AMENDMENTS

Amendments to be Adopted Solely by the General Partner

8.01 The **General Partner** (pursuant to the **General Partner's** Powers of Attorney from the **Limited Partners** described in section 3.07), without the consent or approval at the time of any **Limited Partner** (each **Limited Partner**, by acquiring a **Unit**, being deemed to consent to any amendment pursuant to this section 8.01), may amend any provision of this **Agreement** or the **Declaration**, and execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection with it to reflect:

- (a) the omission, substitution, termination or withdrawal of any **Partner** in accordance with this **Agreement**;
- (b) a change that is necessary to qualify the **Partnership** as a limited partnership or a partnership in which the **Limited Partners** have limited liability under the laws of any province or state;
- (c) a change that is:
 - (i) of an inconsequential nature and does not adversely affect the **Limited Partners** (or any of them) in any material respect; or

- (ii) required or specifically contemplated by this **Agreement** to be accomplished by the **General Partner** acting alone;
- (d) a change in any provision of this **Agreement** which requires any action to be taken by or on behalf of the **General Partner** or the **Partnership** pursuant to the requirements of applicable law if the provisions of applicable law are amended, modified or revoked so that the taking of action is no longer required. The authority set forth in this paragraph shall specifically include the authority to make amendments to this **Agreement** and to the **Declaration** as the **General Partner** deems necessary or desirable in the event the **Act** is amended to eliminate or change any provision now in effect.

Notwithstanding the foregoing, the unanimous consent of all of the **Partners** shall be required for any amendments to this **Agreement** that: (i) alter the ability of the **Limited Partners** to remove the **General Partner** involuntarily; (ii) change the limited liability of any **Limited Partner**; (iii) change the right of a **Limited Partner** to vote at any meeting; (iv) change the **Partnership** from a limited partnership to a general partnership; (v) reduce the percentage of net income allocable to the **Limited Partners** to below 99.99%; (vi) adversely affect the rights and obligations of any particular **Limited Partner** without similarly affecting the rights and obligations of all other **Limited Partners** (vii) change the factors to be considered pursuant to Section 6.05 when determining whether a cash contribution is required of the **Partners** or (viii) establishes a fixed **Debt Ratio**.

The **General Partner** shall notify the **Limited Partners** of the full details of any amendment to this **Agreement** that does not require the approval of the **Limited Partners** within 10 days of the effective date of such amendment.

Amendment Procedures

8.02 Except as specifically provided in the preceding paragraph, all amendments to this **Agreement** shall be made solely in accordance with the following procedures:

- (a) any amendments to this **Agreement** must be proposed by either:
 - (i) the **General Partner**, by submitting the text of the proposed amendment to all **Limited Partners** in writing; or
 - (ii) any **Limited Partner** submitting the text of the proposed amendment in writing to the **Partners**.
- (b) The **General Partner** shall, within 10 days after the receipt of any proposed amendment or as soon thereafter as is reasonably practicable, submit the text of the proposed amendment to all **Limited Partners**. The **General Partner** may include in the submission its recommendation as to the proposed amendment.

- (c) If any amendment is proposed pursuant to this section the **General Partner** shall seek the written consent of the **Partners** to the amendment or shall call a meeting of the **Partners** in accordance with the provisions of this **Agreement** to consider and vote on the proposed amendment. A proposed amendment shall be effective only if approved by **Special Resolution**, unless a greater or different percentage vote of the **Partners** is required by law or any other provision of this **Agreement**. The **General Partner** shall notify all **Partners** upon final adoption or rejection of any proposed amendment.

ARTICLE IX

MEETINGS

Meetings Called by General Partner

9.01 The **General Partner** may call a meeting of the **Partnership** subject to sections 9.03 and 9.04 at such time and place as it considers appropriate in its absolute discretion for the purpose of considering any matters set forth in the notice of meeting.

Meetings Called by Limited Partners

9.02 Any **Limited Partner** may give to the **General Partner** notice, accompanied by the information required to be provided under paragraph 9.04(b), signed by it requesting a meeting of the **Partnership**. The **General Partner** will, within 30 days of receipt of such notice, convene a meeting, and if it fails to do so, the **Limited Partner** requesting the meeting may convene the meeting by giving notice to the **Partners** in accordance with this **Agreement**, signed by such **Person** as the **Limited Partner** requesting the meeting specifies. Every meeting, however convened, will be conducted in accordance with this **Agreement** and the **Act**.

Place of Meeting

9.03 The annual meeting will be held on a rotational basis, unless otherwise unanimously agreed by the **Partners**, at convenient locations in northern Manitoba and southern Manitoba. Meetings can be attended by telephone conference.

Notice of Meetings

9.04 Notice of any meeting will be given to each **Partner** by prepaid ordinary mail or by personal delivery not less than fourteen [14] days (nor more than forty-five [45] days) prior to such meeting, and will state:

- (a) the time, date and place of such meeting; and
- (b) in general terms, the nature of the business to be transacted at the meeting in sufficient detail to enable the **Partners** to make a reasoned judgment concerning each matter to

be considered at the meeting. A copy of the text of any proposed resolution shall accompany the notice of the meeting.

Corporations and Proxies

9.05 A **Partner** which is a corporation shall appoint by resolution an officer, director or other authorized person as its representative to attend, vote and act on its behalf at a meeting of **Partners**. Any **Limited Partner** entitled to vote at a meeting of **Partners** may vote by proxy if a form of proxy has been received by the **General Partner** or the chairperson of the meeting for verification prior to the time fixed by the **General Partner** preceding the meeting, or any adjournment of the meeting. A proxy purporting to be executed by or on behalf of a **Limited Partner** will be considered to be valid unless challenged at the time of or prior to its exercise. The **Person** challenging the proxy will have the burden of proving to the satisfaction of the chairperson of the meeting that the proxy is invalid and any decision of the chairperson concerning the validity of a proxy will be final. Every proxy will be substantially in the form as may be approved by the **General Partner** or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised. A vote cast in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death, incapacity, insolvency or bankruptcy of the **Limited Partner** giving the proxy or the revocation of the proxy unless written notice of that death, incapacity, insolvency, bankruptcy or revocation has been received by the chairperson of the meeting prior to the commencement of the meeting.

Attendance of Others

9.06 Any officer or director of the **General Partner** will be entitled to attend and receive notice of any meeting of **Partners**.

Chairperson

9.07 The **General Partner** may nominate an individual (including an officer, director or shareholder of the **General Partner** and who need not be a **Partner**) to be chairperson of a meeting of **Partners** and the individual nominated by the **General Partner** will be chairperson of such meeting unless the **Partners** elect a chairperson by **Ordinary Resolution**. The position of chairperson at the annual meeting of the **Partners** shall rotate annually between a nominee proposed by **Taskinigahp Power Corporation** and a nominee proposed by **Hydro**.

Quorum

9.08 The quorum for a meeting of **Partners** will consist of all **Partners** being present in person or by proxy; provided however, that if within half an hour after the time fixed for the holding of any meeting of **Partners**, all **Partners** are not present, the meeting, will be held at the same time, and, if available, the same place, not fewer than 10 days nor more than 21 days later (or if that date is not a business day, the first business day after that date), and the **Partner** which requested the meeting will give at least 7 days notice to all **Partners** of the date of the reconvening of the adjourned meeting. Such notice need not set forth the matters to be considered unless they are different from those for which the original meeting was called. At such reconvened meeting the quorum for the meeting will consist of one **Limited Partner** present in person or by proxy holding not less than 50% of the

outstanding **Units**. Nothing herein shall detract from the requirement of all **Partners** being present in person or by proxy at any meeting (whether original or adjourned) at which a **Special Resolution** will be proposed for consideration and vote of the **Partners**. **Partners** can attend meetings by telephone conference.

Voting

9.09 Each question submitted to a meeting will be decided on a show of hands unless a **Partner** demands a ballot be executed by each **Partner**, in which case ballots shall be prepared and signed by each **Partner** present in person or by proxy and entitled to vote and such ballots shall be preserved. The Chairperson will be entitled to vote in respect of any **Units** pursuant to which he or she may have been appointed to vote. On any vote at a meeting of **Partners**, a declaration of the chairperson concerning the result of the vote will be conclusive absent demonstrable error.

Subject as hereinafter provided, each **Partner** present at the meeting will have one vote for each **Unit** of which it is registered as the **Unit** holder. A holder of a fractional **Unit** is entitled to one vote upon a show of hands at all meetings at which holders of that class of **Units** is entitled to vote but if a ballot is demanded, the vote of the holder of the fractional **Unit** shall only be counted as a fractional vote in the same fraction as the **Unit** held by it.

A vote requested or required concerning the election of a chairperson or an adjournment will be taken immediately on request and any other matter will be managed at the meeting or an adjournment of the meeting in such manner as the chairperson directs.

Resolutions Binding

9.10 Any resolution passed in accordance with this **Agreement** will be binding on all the **Partners** and their respective heirs, executors, administrators, successors and assigns, whether or not any such **Partner** was present in person or voted against any resolution so passed.

Powers Requiring Special Resolution

9.11 The following powers shall only be exercisable by the **General Partner** upon the Special Resolution of the **Partners**:

- (a) selling, exchanging or otherwise disposing of all or substantially all of the assets of the **Partnership**;
- (b) continuing the **Partnership** in the event that the **Partnership** is terminated by operation of law;
- (c) changing or terminating the business of the **Partnership**;
- (d) issuing to any party other than **Hydro** or **Taskinigahp Power Corporation**, or a wholly owned subsidiary of **Hydro** or **NCN**, additional **Units**;
- (e) changing the auditors except in the event of a change to Manitoba **Hydro**'s auditors;

- (f) any amendment of this **Agreement**, except as expressly provided for herein or any amendment, alteration, modification or repeal of any **Special Resolution** previously passed by the **Partners**;
- (g) dissolving or terminating the **Partnership**, other than as provided for in this **Agreement**;
- (h) a merger or consolidation involving the **Partnership**;
- (i) a consolidation, subdivision or reclassification of any **Units**;
- (j) adding to, changing or removing any right, privilege, restriction or condition attaching to the **Units** which may reasonably be considered materially adverse to any one or more of the holders of the **Units**;
- (k) any change to Article VI, provided that where **Partners** are unable to agree on a proposed change to any part of Article VI, such dispute may be referred to arbitration in accordance with the provisions of this **Agreement** and the **PDA**;
- (l) requiring the **General Partner** on behalf of the **Partnership** to enforce any obligation or covenant on the part of any **Limited Partner**;
- (m) consenting to any judgment in favour of **Hydro** entered in a court of competent jurisdiction against the **Partnership**; and
- (n) establishing a fixed **Debt Ratio**, but for greater certainty, this Section 9.11(n) shall not be interpreted as requiring a Special Resolution before the General Partner can request the Partners to make additional cash contributions pursuant to Section 6.03.

Powers Exercisable by Ordinary Resolution

9.12 Any other matters not expressly stated in this **Agreement** (including in section 9.11) to be determined by **Special Resolution** and effected by the **General Partner** or stated in section 8.01 to be effected solely by the General Partner shall be determined by **Ordinary Resolution**.

Minutes

9.13 The **General Partner** will cause minutes to be kept of all proceedings and resolutions passed at every meeting, with copies of any resolutions of the **Partnership** to be made and entered in books to be kept for that purpose, and any minutes, if signed by the chairperson of the meeting, will be deemed to be evidence of the matters stated in them and such meeting will be deemed to have been duly convened and held and all resolutions and proceedings shown in them will be deemed to have been duly passed.

Additional Rules and Procedures

9.14 To the extent that the rules and procedures for the conduct of a meeting of the **Partners** are not prescribed in this **Agreement**, the rules and procedures will be determined by the chairperson of the meeting in accordance with *Robert's Rules of Order*.

Authorized Attendance

9.15 The **General Partner** has the right to authorize the presence of any **Person** at a meeting regardless of whether the **Person** is a **Partner**, providing that **Persons** who are not **Partners** are attending the meeting in connection with the **Business**. With the approval of the **General Partner** that **Person** is entitled to address the meeting. When requested by a **Limited Partner**, the **General Partner** shall authorize the attendance of legal counsel for the **Limited Partner** at any meeting of the **Partners**.

Consent Without Meeting

9.16 Any matter which may be addressed by the **Partners** at a meeting may be addressed by written resolution signed by all of such **Partners** in lieu of holding such meeting. In addition, any action required or permitted by this **Agreement** or any provision of law to be taken at a meeting of the **Partners**, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by all of the **Partners** holding all of the **Units** then issued and outstanding and entitled to vote thereon. Such consent shall have the same effect as a vote of such **Partners** and may be stated as such in any certificate or document.

ARTICLE X

DISSOLUTION AND LIQUIDATION

Events of Dissolution

10.01 The **Partnership** shall be dissolved upon the earliest to occur of any one of the following events:

- (a) subject to section 4.02 of this **Agreement**, the bankruptcy, dissolution, liquidation or winding up of the **General Partner**, unless a successor **General Partner** is elected in accordance with this **Agreement** in such manner so as to preserve the on-going limited liability of the **Limited Partners**;
- (b) withdrawal or resignation of the **General Partner** unless a successor **General Partner** is elected in accordance with this **Agreement** in such manner so as to preserve the on-going limited liability of the **Limited Partners**;

- (c) the removal of the **General Partner** in accordance with section 4.03 and the failure to elect a successor **General Partner** in such manner so as to preserve the on-going limited liability of the **Limited Partners**;
- (d) except as otherwise provided in this **Agreement**, any other event which would cause a dissolution under the **Act**;
- (e) after the passing of a resolution requiring unanimous consent in accordance with paragraph 9.11 (g);
- (f) the dissolution of the **Partnership** by operation of law; and
- (g) the conversion or reconstitution of the **Partnership** into another form of entity under circumstances permitted by this **Agreement**.

Appointment of Receiver

10.02 Upon the occurrence of an event described in section 10.01, the **General Partner** shall act as the Receiver (the "Receiver") of the **Partnership**. If the **General Partner** is unable or unwilling to act as the Receiver or if the event causing dissolution is set out in section 10.01(a), (b) or (c), the **Partners** shall, by **Ordinary Resolution**, appoint some other appropriate person to act as Receiver. Subject to section 10.03, the Receiver shall proceed diligently to wind up the affairs of the **Partnership** and to liquidate the **Partnership Assets** and to distribute the net proceeds from the sale of the **Partnership Assets** in the priority set out herein unless otherwise required by mandatory provisions of applicable law. During the course of such liquidation, the Receiver shall operate the **Business** and in so doing shall be vested with all the powers and authority of the **General Partner** in relation to the **Partnership** under the terms of this **Agreement**. A Receiver which is not the **General Partner** shall be paid reasonable fees and disbursements incurred in carrying out such duties.

Sale of Partnership Assets

10.03 In the event of dissolution, any sale, liquidation, distribution or other disposition of the **Partnership Assets** shall only be to **Hydro**. Not later than 120 days from a decision by the Receiver to liquidate the **Partnership Assets**, the Receiver shall sell the **Partnership Assets** to **Hydro** and **Hydro** shall purchase the **Partnership Assets** from the Receiver for an amount equal to the fair market value of such assets after making such adjustments as are reasonable on account of the limited market for the sale of the assets, all as determined by an independent third party with expertise in the generation and sale of electricity at the time of sale.

Distribution Upon Dissolution

10.04 In the event of the dissolution of the **Partnership**, the Receiver shall distribute the net proceeds from the sale of the **Partnership Assets** as follows:

- (a) first, to pay the expenses of liquidation and the creditors of the **Partnership**;

- (b) secondly, to provide such reserves as the Receiver considers necessary for any contingent liabilities, including the costs of foreseeable environmental requirements, of the **Partnership**;
- (c) thirdly, to return the balance to the **Partners**, pro rata among them according to the capital accounts of each of them at the time.

Events Not Causing Dissolution

10.05 To the maximum extent permitted by the laws of the Province of Manitoba and notwithstanding any rule of law or equity to the contrary, the **Partnership** shall not be dissolved or terminated by admission of any new **General Partner** or **Limited Partner** or the removal, actual or deemed resignation, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or the admission, resignation or withdrawal of the **General Partner**, the **Limited Partners** or any **Limited Partner**, except in accordance with this **Agreement**.

Deferring Liquidation

10.06 Subject to section 10.03, upon the occurrence of an event described in section 10.01, the Receiver may defer the liquidation of the **Partnership Assets** or may distribute any of the **Partnership Assets** in kind if the **General Partner** or the Receiver determines that a sale would be impractical or would cause undue loss to the **Limited Partners**.

Reasonable Time for Winding Up

10.07 A reasonable time shall be allowed for the orderly winding up of the **Business** and affairs of the **Partnership** and the liquidation of the **Partnership Assets** pursuant to section 10.02 in order to minimize any losses otherwise attendant upon a winding up.

ARTICLE XI

MISCELLANEOUS

Notices

11.01 Any notice or other written communication which must be given or sent under this **Agreement** shall be deemed to have been validly given and received on the third business day following its sending by first class ordinary mail to the address of the **General Partner** and the **Limited Partners** as follows:

- (a) in the case of the **General Partner**, at 360 Portage Avenue, Winnipeg, Manitoba R3C 0G8 (Facsimile No. 204-474-4947) or any new address as the **General Partner** may give notice of; and

- (b) in the case of the **Limited Partners** to the address appearing on the register maintained by the **Registrar and Transfer Agent**, which shall include, where available, a mailing address, facsimile number and electronic mail address for each such **Limited Partner** (a **Limited Partner** may give notice to the **Registrar and Transfer Agent** of a new address for such **Limited Partner**, and the **Registrar and Transfer Agent** shall update the register accordingly).

Notices may be personally delivered or delivered by facsimile or other electronic communication and shall be deemed to be received on the day delivered or, if transmitted, as evidenced by confirmed transmission report.

Further Acts

11.02 The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this **Agreement** and every part thereof.

Binding Effect

11.03 Subject to the restrictions on assignment and transfer herein contained, this **Agreement** shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

Severability

11.04 Each provision of this **Agreement** is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.

Counterparts

11.05 This **Agreement** may be executed in any number of counterparts (either originally or by facsimile) with the same effect as if all parties hereto had signed the same document. This **Agreement** may also be adopted in any subscription and assignment forms or similar instruments signed by a **Partner**, with the same effect as if such **Partner** had executed a counterpart of this **Agreement**. All counterparts and adopting instruments shall be construed together and shall constitute one and the same agreement.

Time

11.06 Time shall be of the essence.

Governing Law

11.07 This **Agreement** shall be governed by and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein.

Dispute Resolution

11.08 The parties each agree that any disputes or claims arising out of this **Agreement** (other than a review of reserves established by the **General Partner** under section 6.06 hereof, which shall be carried out in accordance with the process set out in Article XX of the **PDA**), including, for greater certainty, any dispute about whether the General Partner has breached its fiduciary obligations to the **Partnership**, shall be determined solely in accordance with the dispute resolution process set out in Article XXI of the **PDA** and they shall not bring any action, other than pursuant to Article XXI of the **PDA**, against any other party or against the **Limited Partnership**. The parties each agree that they shall not bring any action against any officer or director of the **General Partner**, except where such officer or director has committed fraud or has, by act or omission, done anything in respect of which such officer or director would not be entitled to indemnity from the **General Partner** under The Corporations Act (Manitoba), The Manitoba Hydro Act or such other legislation as may be applicable.

[Execution page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused it to be executed on their behalf by their duly authorized signing officers as of the day and year first above written.

5022649 MANITOBA LTD.

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

TASKINIGAHP POWER CORPORATION

Per: _____
Name:
Title: President

Per: _____
Name:
Title: Vice-President

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

THE MANITOBA HYDRO-ELECTRIC BOARD

Per: _____
Name:
Title: President and Chief Executive Officer

Per: _____
Name:
Title: Corporate Secretary

SCHEDULE A

WUSKWATIM POWER LIMITED PARTNERSHIP SUBSCRIPTION FORM AND POWER OF ATTORNEY

TO: WUSKWATIM POWER LIMITED PARTNERSHIP

The undersigned hereby subscribes for _____ **Unit(s)** of Wuskwatim Power Limited Partnership (the "Limited Partnership") on the terms and as described in the Second Amended and Restated Limited Partnership Agreement, receipt of which is hereby acknowledged and tenders herewith its cheque in the amount of _____ in full payment of the aggregate subscription price for the said **Unit(s)**. The undersigned agrees to be bound, as a party to and as limited partner in the **Partnership**, by the terms and conditions of the Second Amended and Restated Limited Partnership (the "**Agreement**"), as same may be amended from time to time in accordance with its terms, as if the undersigned had executed the **Agreement**.

The undersigned hereby represents, warrants and declares that:

- (a) the undersigned is a "resident" of Canada within the meaning of *The Income Tax Act* (Canada);
- (b) the undersigned is purchasing the **Units** as principal for its own account and not for the benefit of any other person; and
- (c) this subscription agreement has been duly authorized, executed and delivered by and constitutes a legal, valid, binding and enforceable obligation of, the undersigned.

The undersigned hereby irrevocably constitutes and appoints the **General Partner** of the **Partnership**, with full power of substitution, as his or its true and lawful attorney and agent, with full power and authority in his name, place and stead to:

- (a) execute, deliver, swear to and record in the appropriate public offices any and all of the following:
 - (i) the **Agreement**, all declarations and declarations of change required under *The Partnership Act* (Manitoba), *The Business Names Registration Act* (Manitoba) and elsewhere as may be required, and any other instruments and amendments thereto which the **General Partner** deems appropriate or necessary to form, qualify, continue and keep in good standing the **Partnership** as a limited partnership in compliance with the laws of the Province of Manitoba or elsewhere as may be required;

- (ii) any instruments, certificates and any amendments thereto necessary to reflect any amendment to the Amended and Restated Limited Partnership Agreement properly approved as required pursuant to the terms of the Amended and Restated Limited Partnership Agreement; and
 - (iii) any conveyances, agreements and other instruments which the **General Partner** deems appropriate or necessary to reflect the dissolution and termination of the **Partnership** pursuant to the terms of the **Agreement** to be entered into on behalf of each **Partner**, including cancellation of any declarations;
- (b) execute and file with any governmental body or instrumentality of the Government of Canada or of a province any documents necessary to be filed in connection with the business, property, assets and undertaking of the **Partnership**;
 - (c) execute and deliver such documents on behalf of and in the name of the **Partnership** and for the **Partners** as may be necessary to give effect to the purposes of the **Partnership** as described in the **Agreement**;
 - (d) prepare, execute and file all income tax, sales tax and other tax forms, returns and elections which the **Partnership** is required to file or which are deemed desirable to be filed by the **General Partner**; and
 - (e) prepare and execute assignments and transfers of **Units** when necessary or desirable in accordance with the terms of the **Agreement**.

The power of attorney granted herein is irrevocable and is a power coupled with an interest and is executed under seal and will survive the legal incapacity or mental incompetence of the undersigned and extend to the heirs, executors, administrators, successors and assigns of the undersigned. The undersigned agrees to be bound by any representation or action made or taken by the **General Partner** pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm any action of the **General Partner** taken in good faith under this power of attorney.

IN WITNESS WHEREOF the undersigned has executed this subscription form and power of attorney at Winnipeg, in the Province of Manitoba, this day of , 20__.

Witness

Subscriber

IN WITNESS WHEREOF the Wuskwatim Power Limited Partnership has accepted this subscription form and power of attorney by its **General Partner**, 5022649 Manitoba Ltd., having caused its duly authorized proper officer to execute this subscription form and power of attorney this ____ day of _____, 20__.

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

Per: _____