
JOINT KEEYASK DEVELOPMENT AGREEMENT

between

**TATASKWEYAK CREE NATION and WAR LAKE FIRST
NATION operating as CREE NATION PARTNERS,**

- and -

YORK FACTORY FIRST NATION,

- and -

FOX LAKE CREE NATION,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD.

DATED MAY 29, 2009.

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THIS MEMORANDUM OF AGREEMENT made the 29th day of May, 2009.

BETWEEN:

TATASKWEYAK CREE NATION (“**TCN**”) and WAR LAKE
FIRST NATION (“**War Lake**”), operating as CREE NATION
PARTNERS,

(hereinafter called “**CNP**”),

OF THE FIRST PART,

- and -

YORK FACTORY FIRST NATION,

(hereinafter called “**York Factory**”),

OF THE SECOND PART,

- and -

FOX LAKE CREE NATION,

(hereinafter called “**Fox Lake**”),

OF THE THIRD PART,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter called “**Hydro**”),

OF THE FOURTH PART.

WHEREAS:

- A. **TCN** is a Cree Nation most of whose **Members** live on reserve lands located at Split Lake, **War Lake** is a First Nation many of whose **Members** live on reserve lands located at Ilford, **York Factory** is a First Nation many of whose **Members** live on reserve lands located at York Landing and **Fox Lake** is a Cree Nation many of whose **Members** live in the Town of Gillam and on reserve lands located at Bird, all in northern Manitoba;
- B. **Hydro** is a Crown Corporation established in 1949 and continued by the **Hydro Act**, for the purposes of, among other things, providing for the continuance of a supply of power adequate for the needs of the Province of Manitoba and providing and marketing products, services and expertise related to the development, generation, transmission, distribution, supply and end use of power within and outside of the Province of Manitoba;
- C. For some time **Hydro** has identified Gull Rapids on the Nelson River, in the **Split Lake Resource Management Area** downstream of Split Lake, as a potential site for future hydro-electric development;
- D. In 1998, **TCN** initiated discussions with **Hydro** to explore whether a mutually beneficial business relationship for the development of the **Keeyask Project** could be agreed upon;
- E. On October 17, 2000 **TCN** and **Hydro** entered into the **Agreement in Principle** for the purposes of setting out certain fundamental principles and understandings to govern a new relationship between **TCN** and **Hydro** with respect to the potential development of the **Keeyask Project**, and to provide a framework to guide the negotiation of this **JKDA**;
- F. In developing the **Agreement in Principle**, **TCN** and **Hydro** recognized the benefit of providing the opportunity for **War Lake**, **Fox Lake** and **York Factory** to participate as partners in the ownership, development and operation of the **Keeyask Project**;
- G. On September 14, 2001, **Hydro** and the Chief of each **Keeyask Cree Nation** entered into the **Principals' Memorandum** setting out the negotiating principles for concluding this **JKDA**, according to the principles outlined in the **Agreement in Principle**, and providing for a sharing of the percentage ownership interest available to be acquired by the **Keeyask Cree Nations**;
- H. On October 15, 2002, **Hydro** and the Chief of each **Keeyask Cree Nation** entered into the **Process Proposal**, providing for negotiating principles and process arrangements to finalize this **JKDA**;
- I. On July 9, 2003, **TCN**, **Hydro** and **War Lake** entered into the **War Lake Participation Agreement** pursuant to which **War Lake** was made a party to the **Agreement in Principle** and certain of the concerns and interests of **War Lake** in relation to the development of the **Keeyask Project** were addressed;

- J. Each of **Hydro** and each **Keeyask Cree Nation**, in accordance with its decision-making processes, has completed its own independent consultations and assessments with respect to all of the matters addressed in this **JKDA** and has determined that if, in accordance with the provisions, and subject to conditions, of this **JKDA**, a decision is made to proceed with the development of the **Keeyask Project**, then the development of the **Keeyask Project** shall proceed on the terms and conditions set out in this **JKDA**;
- K. The nature and significance of all of the major aspects of this **JKDA** have been explained to **Members** of each **Keeyask Cree Nation** at community meetings held in accordance with the provisions of the **Ratification Protocol**, and **Members** of each **Keeyask Cree Nation**, by **Referendum** taken by the **Date of this JKDA**, will have voted to authorize its **Chief and Council** to sign this **JKDA**, such authorization to be evidenced by certificates to that effect issued pursuant to the **Ratification Protocol**; and
- L. **TCN** and **War Lake** signed their respective **KCN Adverse Effects Agreements** with **Hydro** on March 13, 2009;

THEREFORE the **Parties** agree as follows:

ARTICLE 1

STRUCTURE AND INTERPRETATION

1.1 STRUCTURE

Article and Section Headings

1.1.1 The division of this **JKDA** into Articles, sections, subsections and clauses, the insertion of headings and the inclusion of a table of contents are for reference purposes only and shall not affect the interpretation of this **JKDA**. Unless otherwise indicated, any reference in this **JKDA** to an Article, section, subsection, clause or a Schedule refers to the specified Article or section, subsection, or clause of, or Schedule to, this **JKDA**.

Schedules

1.1.2 The following Schedules are attached to and form part of this **JKDA**.

Schedule 1-1	Limited Partnership Agreement
Schedule 1-2	Construction Agreement
Schedule 1-3	Project Financing Agreement
Schedule 1-4	Power Purchase Agreement
Schedule 1-5	KCN Financing Agreement (CNPLP)
Schedule 1-6	KCN Financing Agreement (YFFNLP)
Schedule 1-7	KCN Financing Agreement (FLCNKII)
Schedule 2-1	Figure of Limited Partnership Structure
Schedule 3-1	Environmental Protocol
Schedule 4-1	Subscription Agreement (Hydro)
Schedule 4-2	Subscription Agreement (General Partner)
Schedule 4-3	Subscription Agreement (CNPLP)
Schedule 4-4	Subscription Agreement (YFFNLP)
Schedule 4-5	Subscription Agreement (FLCNKII)
Schedule 4-6	CAC Terms of Reference
Schedule 4-7	MAC Terms of Reference
Schedule 7-1	Project Description
Schedule 11-1	Reservoir Clearing Plan
Schedule 11-2	Waterways Management Program
Schedule 11-3	Existing Hydro Commitments
Schedule 12-1	CNP Revenue Advance Agreement

Schedule 12-2	Fox Lake Revenue Advance Agreement
Schedule 12-3	Proposed Letter of Agreement
Schedule 12-4	BNA Articles 2.9, 12 & 13
Schedule 12-5	C/B/N River Area and Northern Resident Boundary
Schedule 12-6	BNA Negotiation Process
Schedule 12-7	AGE Terms of Reference
Schedule 12-8	Draft Employment Framework (Operational Jobs)
Schedule 13-1	Identified Work Packages & Allocation
Schedule 13-2	Proposal Review Process
Schedule 13-3	Bonding Requirements
Schedule 15-1	Hydro Act Provisions
Schedule 15-2	Listed Agreements
Schedule 19-1	Form of Arbitrator's Undertaking
Schedule 20-1	Ratification Protocol
Schedule 24-1	Scheduled Confidentiality Agreement (CNP)
Schedule 24-2	Scheduled Confidentiality Agreement (York Factory)
Schedule 24-3	Scheduled Confidentiality Agreement (Fox Lake)
Schedule 24-4	Certificate of Independent Legal Advice (CNP)
Schedule 24-5	Certificate of Independent Legal Advice (York Factory)
Schedule 24-6	Certificate of Independent Legal Advice (Fox Lake)
Schedule 24-7	Certificate of Independent Legal Advice (Hydro)

Severability

1.1.3 If any term or other provision of this **JKDA** is invalid, illegal or incapable of being enforced by any rule or law, or public policy, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any **Party**, all other conditions and provisions of this **JKDA** shall nevertheless remain in full force and effect, in which event the **Parties** shall negotiate in good faith to modify this **JKDA** so as to effect the original intent of the **Parties** as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Entire Agreement

1.1.4 This **JKDA** and the documents and agreements specifically referenced in this **JKDA** constitute the entire agreement between the **Parties** with respect to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions between or among the **Parties**, or any of them, unless otherwise stated herein. Without limiting the generality of the foregoing, the **Agreement in Principle**, the **War Lake Participation Agreement**, the **Principals' Memorandum** and the **Process Proposal** are each deemed to be superseded and terminated upon the execution of this **JKDA**. The **Confidentiality Agreements**, the **TCN 1992 Agreement**, the **TCN 1996 Agreement**, the **NFA**, the **War Lake 2005 Agreement**, the **York Factory Comprehensive Agreement** and the **Fox Lake ISA** are not superseded and all continue in force and effect.

1.2 INTERPRETATION

Interpretation

1.2.1 In this **JKDA**, words importing the singular number only shall include the plural and vice versa, as the context may require, and words importing gender shall include all genders. Words importing persons shall include firms, governments, First Nations, limited partnerships, corporations and trusts, as the context may require. Wherever the word “include”, “includes”, “including” or other grammatical variation thereof appear in this **JKDA**, they will be deemed to be followed by the phrase “without limitation”. The words “shall” and “will” when used in this **JKDA** are each obligatory in nature.

Defined Terms

1.2.2 For the purposes of this **JKDA**, the following terms, when the first letter is capitalized and the term is in bold, shall have the respective meanings set out below, and grammatical variations of such terms shall have corresponding meanings:

“**Aboriginal Training Partners**” means each **Keeyask Cree Nation**, **NCN**, **MKIO** and **MMF**.

“**Adjusted Gross Revenues**” means in respect of any particular **Fiscal Year**, the revenues of the **Limited Partnership** for that year determined in accordance with **GAAP**, including revenues received or receivable pursuant to the **PPA**, which revenues, for greater certainty, will already have been reduced by all charges under the **PPA**, but for the purpose of this definition only, transmission charges pursuant to section 3.2 of the **PPA** will be added back, less:

- (a) amortization and finance expense incurred in the year, determined in accordance with **GAAP**:
 - (i) on **Pre-Construction Costs**; and

- (ii) on the cumulative balance of all capital costs incurred after the **Final Closing Date**, net of any insurance proceeds in respect of related capital assets, provided that if there are **Major Capital Costs** in the year, then all capital costs incurred in the year, including such **Major Capital Costs**, will be excluded from the calculation of the cumulative balance of all capital costs for that year and for subsequent years;

and

- (b) for all **Fiscal Years** ending after the **Final Closing Date**, all operating expenses incurred in the year, determined in accordance with **GAAP**, including, for greater certainty, **Management Services Costs** and **Operating Services Costs** and excluding, for greater certainty, water rental charges and amortization and finance expenses.

“Advisors” means all duly authorized employees, representatives, agents, legal counsel, technical advisors and consultants.

“Advisory Group on Employment” means an advisory committee to the **Project Manager**, which the **Project Manager** agrees to establish to perform the functions described in the **AGE Terms of Reference**.

“AGE Terms of Reference” means the terms of reference for the **Advisory Group on Employment**, as amended from time to time, attached hereto as Schedule 12-7.

“Agreement in Principle” means the agreement in principle made between **Hydro** and **TCN** dated October 17, 2000.

“Allied Hydro Council” means the Council formed by those unions described in the **BNA** from time to time, to act as exclusive bargaining agent for the unions in the negotiation and administration of the **BNA**.

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

“Annual Budget” means an estimate, prepared annually in each **Fiscal Year**, of the revenues and expenses of the **Limited Partnership** for the immediately following **Fiscal Year**, by category, including an estimate of **Distributable Cash**, a capital expenditure budget and a cash flow forecast, provided that, during the **Construction Period**, the estimate of capital expenditures for any **Fiscal Year** shall consist simply of an estimate of the aggregate construction costs expected to be incurred in the year as provided by the **Project Manager** under the **Construction Agreement**.

“Applicable Laws” means all laws, rules, regulations, codes, by-laws, statutes, licences, permits, directives and orders, in effect from time to time, of all governmental authorities having jurisdiction with respect to the **Limited Partnership** or the conduct of the **Business**.

“Applicable Reliability Organization” means any reliability organization whose standards **Hydro** (or an affiliate of **Hydro**) has contracted to adhere to or with which **Hydro** (or an affiliate of **Hydro**) must comply as a condition of doing business in or with a region, or which has authority to set standards in the region in which the **Keeyask Generating Station** is located.

“Arbitrator” means a person appointed in accordance with the procedure set out in Article 19 of this **JKDA** to adjudicate a dispute between the **Parties**.

“ASL” means above sea level.

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

“Banker’s Acceptance Rate” means the closing rate on any particular day for a one (1) month **Canadian Dollar** banker’s acceptance as traced in Bloomberg using the “Canadian Deposit Offered Rate 01 index”.

“Bipole III” means the proposed new **HVDC** transmission line contemplated to be constructed by **Hydro** in the Province of Manitoba and generally known as Bipole III, and all associated convertor stations and communication-related facilities and high voltage alternating current transmission lines required to connect such facilities to the rest of the **Integrated Power System**, and all switching, transformer stations and related works to be located at the northern and southern terminals of the proposed new **HVDC** transmission line and such additional high voltage alternating current transmission lines and facilities that are constructed as part of the proposed new **HVDC** transmission line, without regard to the inclusion of the **Keeyask Generating Station** as part of the **Integrated Power System**.

“BNA” means the Burntwood/Nelson Agreement, a collective agreement made between the **Allied Hydro Council** and the **HPMA** dated October 7, 2005, and any amendments thereto.

“Business” means the business and affairs of the **Limited Partnership** and includes the completion of the planning and the design and the ownership, construction, operation, maintenance and control of the **Keeyask Project** and any activities incidental or related thereto, carried on with a view to earning a profit.

“Business Case” means a business case in respect of the **Keeyask Project** prepared by **Hydro** for use by its board of directors in determining whether to support a decision of the **Limited Partnership** whether to proceed with the construction of the **Keeyask Project**, or whether to

restart construction of the **Keeyask Project**, as the case may be, utilizing assumptions consistent with the then most recently approved **Integrated Financial Forecast**.

“**Business Day**” means a day on which banks are open for business in the City of Winnipeg, but does not include a Saturday, Sunday or statutory holiday in the Province of Manitoba.

“**CAC Terms of Reference**” means the terms of reference for the **Construction Advisory Committee**, as amended from time to time, attached hereto as Schedule 4-6.

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

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

“**Capital Requirements**” means all funds required by the **Limited Partnership** to carry on the **Business**, including funds to satisfy obligations incurred or paid or payable by the **Limited Partnership**, including to **Hydro**, or paid by **Hydro** on behalf of the **Limited Partnership**, in connection with the **Keeyask Project**, excluding the **Keeyask Transmission Facilities Capital Amount**.

“**Cash Call**” means a demand on **Partners** made by the **General Partner** pursuant to the **LP Agreement** for an additional capital contribution.

“**Cash Payments**” means a payment made or to be made in **Permitted Funds** to the **Limited Partnership** by a **KCN Investment Entity** in respect of any of the following:

- (a) its **Nominal Subscription Cash**;
- (b) its **Initial Closing Cash**;
- (c) an **Election Payment**, if any; or
- (d) **Cash Calls** in respect of **Class E Activated Units**, if any.

“**Chief and Council**” means any one of **TCN Chief and Council**, **War Lake Chief and Council**, **Fox Lake Chief and Council** or **York Factory Chief and Council**.

“**Churchill/Burntwood/Nelson River Area**” means:

- (a) the area of the Churchill River Water Power Reserve from Granville Lake downstream to Hudson Bay;
- (b) the area of the Burntwood River Water Power Reserve from Southern Indian Lake downstream to Split Lake;

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

as illustrated on the attached Schedule 12-5.

“Claim” means a dispute, difference or claim, or apprehended dispute, difference or claim brought or to be brought pursuant to Article 19 of this **JKDA**.

“Claimant” means a party who brings a **Claim**.

“Claim Notice” means a written notice provided by a **Claimant** containing the following:

- (a) the name of the respondent or respondents;
- (b) the name of the agreement under which the **Claim** is brought;
- (c) a detailed description of the **Claim**; and
- (d) the relief, remedy, redress or declaratory order sought.

“Class E Unit” means a **Unit** in the **Limited Partnership** designated as a Class E Unit, having the rights, privileges, restrictions and conditions set out in the **LP Agreement**, which are summarized in subsection 4.1.2 of this **JKDA**.

“Class E Activated Unit” means a **Class E Unit** in respect of which an **Election Notice** has been delivered and an **Election Payment** has been made to the **General Partner**, either on the **Initial Closing Date**, or on or after the tenth anniversary of the **Final Closing Date**, in the manner provided in the **LP Agreement**.

“Class E Inactivated Unit” means a **Class E Unit** in respect of which no **Election Notice** has been delivered and no **Election Payment** has been made to the **General Partner**.

“Class K Unit” means a **Unit** in the **Limited Partnership** designated as a Class K Unit, having the rights, privileges, restrictions and conditions set out in the **LP Agreement**, which are summarized in subsection 4.1.2 of this **JKDA**.

“Class K Common Unit” means a **Class K Unit** in respect of which no **Preferential Distribution Notice** has been delivered to the **General Partner** and no **Final Closing Preferred**

Unit Adjustments have occurred, as provided in subsections 5.3.6 and 5.3.7 of this **JKDA**, and in the **LP Agreement**.

“**Class K Preferred Unit**” means a **Class K Unit** in respect of which a **Preferential Distribution Notice** has been delivered to the **General Partner** and **Final Closing Preferred Unit Adjustments** have occurred, as provided in subsections 5.3.6 and 5.3.7 of this **JKDA**, and in the **LP Agreement**.

“**Class M Unit**” means a **Unit** in the **Limited Partnership** designated as a Class M Unit, having the rights, privileges, restrictions and conditions set out in the **LP Agreement**, which are summarized in subsection 4.1.2 of this **JKDA**.

“**Closing Licences**” means the following regulatory processes, licences, approvals and authorizations in respect of the **Keeyask Project**:

- (a) an interim licence issued under *The Water Power Act* (Manitoba);
- (b) an environmental licence issued under *The Environment Act* (Manitoba);
- (c) the completion of the environmental assessment process, including the comprehensive study report, required under the *Canadian Environmental Assessment Act* (Canada);
- (d) the approvals required under the *Navigable Waters Protection Act* (Canada); and
- (e) the authorizations required under the *Fisheries Act* (Canada).

“**CNP**” means **TCN** and **War Lake**.

“**CNPLP**” means Cree Nation Partners Limited Partnership created pursuant to a limited partnership agreement dated the 15th day of May, 2009, with 5872066 Manitoba Ltd, as the general partner, and **TCN** and **War Lake**, as limited partners.

“**Common Unit Adjustment Formula**” means, in respect of a **KCN Investment Entity** holding **Class K Common Units** on the **Final Closing Date**, the formula:

$$A \times (1 - B / C)$$

where,

A is the aggregate number of **Class K Common Units** owned by the particular **KCN Investment Entity** on the **Initial Closing Date**;

B is the particular **KCN Investment Entity's Own Cash Invested**; and

C is the particular **KCN Investment Entity's Proportionate Share** of twenty-five million (\$25,000,000) dollars.

"Common Unit Distribution Loan" means a loan by **Hydro** to a **KCN Investment Entity** owning **Class K Common Units**, in an amount equal to such **KCN Investment Entity's Own Cash Invested** multiplied by the **Minimum Distribution Rate**, in accordance with the terms of its **KCN Financing Agreement**.

"Common Unit Distribution Credit Facility" means the non-revolving credit facility to be made available by **Hydro** to a **KCN investment Entity** to provide **Common Unit Distribution Loans**, in accordance with the terms of its **KCN Financing Agreement**.

"Common Unit Loan Adjustment Formula" means, in respect of a **KCN Investment Entity** holding **Class K Common Units** on the **Final Closing Date**, the formula:

$$A \times (1 - B / C)$$

where,

A is the aggregate amount outstanding under the particular **KCN Investment Entity's Construction Credit Facility**;

B is the particular **KCN Investment Entity's Own Cash Invested**; and

C is the particular **KCN Investment Entity's Proportionate Share** of twenty-five million (\$25,000,000) dollars.

"Confidentiality Agreements" means agreements in favour of **Hydro** signed by various individuals, including **Advisors**, involved by or on behalf of any of the **Keeyask Cree Nations** in matters pertaining to the **Keeyask Project**, whereby such parties agreed to keep confidential all confidential information as defined therein and to return such confidential information to **Hydro** upon demand by **Hydro**.

"Construction Advisory Committee" means an advisory committee to the **Limited Partnership** to be established by the **Limited Partnership** in accordance with the **CAC Terms of Reference**, as amended from time to time.

"Construction Agreement" means the agreement to be entered into between the **Limited Partnership** and **Hydro**, as the **Project Manager**, whereby **Hydro**, either directly or indirectly through subcontractors will plan, design, engineer, construct and commission the **Keeyask Project**, which agreement shall be substantially in the form attached hereto as Schedule 1-2.

"Construction Conditions" means those conditions described in subsection 8.1.4 to be satisfied prior to the **Limited Partnership** commencing construction of the **Keeyask Project**.

“Construction Credit Facility” means the non-revolving credit facility to be made available by **Hydro** to a **KCN Investment Entity** in accordance with the terms of its **KCN Financing Agreement**.

“Construction Notice” means a notice in writing to be given by **Hydro** pursuant to subsection 8.1.3 confirming that in its opinion all of the **Construction Conditions** have been satisfied and specifying a **Construction Start Date** not earlier than forty-five (45) days from the date of the notice.

“Construction Period” means the approximately eight (8) year period during which the **Keeyask Project** is being constructed, which for the purposes of this **JKDA** will be the period commencing on the date on which the **Construction Start** occurs and ending on the **Final Completion Date**.

“Construction Start” means the commencement of construction on the access road or camp infrastructure for the **Keeyask Project**.

“Construction Start Date” means the date specified in the **Construction Notice** on or after which, subject to the terms of this **JKDA**, a **Construction Start** may occur.

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

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

“Council Resolution” means a resolution passed by a **Chief and Council** of a **Keeyask Cree Nation**.

“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, including the **Augmented Flow Program**, to operate the **CRD** granted from time to time by **Manitoba** to **Hydro** under *The Water Power Act* (Manitoba).

“CST” means Central Standard Time.

“Credit Facilities” means the **Construction Credit Facility**, the **Operating Credit Facility** and the **Common Unit Distribution Credit Facility**.

“Date of this JKDA” means the formal date of this **JKDA** to be inserted on the face page hereof, being the date on which **Hydro** and the **Keeyask Cree Nations** representing at least a **KCN Majority** sign this **JKDA**.

“Deficiency Notice” means a notice delivered by **TCN** or **York Factory**, as the case may be, in the manner provided in either subsection 3.2.2 or 3.2.4 of this **JKDA**, as the case may be, specifying:

- (a) in the circumstances described in subsection 3.2.2, the terms and conditions of the **Closing Licence** which **TCN** or **York Factory**, as the case may be, believes, if implemented or complied with, would result in an unacceptable change to a **Fundamental Feature** applicable to it, and setting out in reasonable detail the grounds for such belief; or
- (b) in the circumstances described in subsection 3.2.4, the terms and conditions of the proposed change or changes to a **Closing Licence** which **TCN** or **York Factory**, as the case may be, believes, if implemented or complied with, would result in an unacceptable change to a **Fundamental Feature** applicable to it, and setting out in reasonable detail the grounds for such belief.

“Direct Negotiation” means a non-tendered direct negotiation process through which **Hydro** in its capacity as **Project Manager** can conclude contracts directly with one or more **Keeyask Cree Nations**, or one or more **KCN Businesses** designated by one or more **Keeyask Cree Nations** for that purpose, in the manner set out in Article 13.

“Direct Negotiation Contract” means a contract negotiated directly with a **Proposer** through **Direct Negotiation**.

“Distributable Cash” means, in respect of any particular **Fiscal Year**, the amount, if any, determined by the **General Partner** to be in excess of the amount required to maintain the debt ratio as provided in the **LP Agreement** and contribute to any **Special Reserves**.

“Early Contribution Agreements” means agreements entered into between **Hydro** and each of **CNP** and **Fox Lake** with respect to early advances of **KCN Training Funds**.

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

“EIS Coordination Team” means a team of four (4) people, comprised of two (2) **CNP** team coordinators and two (2) **Hydro** team coordinators, responsible for the coordination of the **Environmental Impact Assessment** and to perform the functions set out in the **Environmental Protocol**.

“EIS Guidelines” means the *Guidelines for the Preparation of an Environmental Impact Statement for the Keeyask Generation Project* to be issued by **Regulatory Authorities** to guide the preparation of the **EIS**.

“Election Notice” means a notice delivered to the **General Partner** by a holder of **Class E Inactivated Units** that it wishes to make an **Election Payment** to activate all or a portion of such **Units** and commence receiving distributions out of **Distributable Cash** in respect of such activated **Units**, as provided in the **LP Agreement**.

“Election Payment” means the fair market value amount to be paid by a holder of **Class E Inactivated Units** to activate all or a portion of such **Units** and commence receiving distributions out of **Distributable Cash** in respect of such activated **Units**, as provided in the **LP Agreement**.

“Electing Entity” means a **KCN Investment Entity** that seeks, pursuant to subsection 5.5.3 of this **JKDA**, to grant a security interest in distributions on its **Units** as collateral to a proposed lender to fund an **Election Payment**.

“Employment Retention Contract” means a contract, if any, in respect of a work package for employment retention services on the **Keeyask Project**.

“Energy Charge” means the compensation determined to be payable by **Hydro** to the **Limited Partnership** under section 2.2 of the **PPA**.

“Environment Act Proposal Form” means the application to be submitted to Manitoba Conservation pursuant to *The Environment Act* (Manitoba) for a licence for the **Keeyask Project**.

“Environmental Impact Assessment” means the assessment of the environmental effects of the **Keeyask Project** completed for the purposes of federal and provincial legislation, including public consultation and review, and preparation of the **EIS**.

“Environmental Protection Plans” means the plans which the **Limited Partnership** will be required to file with **Regulatory Authorities** in order to satisfy the environmental protection conditions of the **Closing Licences**.

“Environmental Protocol” means the environmental and regulatory protocol for the finalization of the **Environmental Impact Assessment** and the **EIS** and the submission of the **EIS** to **Regulatory Authorities**, substantially in the form attached as Schedule 3-1 to this **JKDA**.

“Expert” means an individual, or a firm, or an organization of individuals, independent of the **Parties**, with knowledge, expertise and experience in hydro-electric generation and the electric utility industry, appointed in the manner provided in Article 18 of this **JKDA**.

“Expert Review Mechanism” means one or more of the mechanisms for the review by an **Expert** as provided in Article 18 of this **JKDA**.

“Final Closing” means the completion of the **Final Closing Transaction** on the **Final Closing Date**.

“Final Closing Cash” means, in respect of any particular **KCN Investment Entity**, an amount equal to its **Proportionate Share** of twenty-five million (\$25,000,000) dollars, or such lesser amount as it determines to invest, but in any case not to be less than its **Proportionate Share** of twelve million five hundred thousand (\$12,500,000) dollars, less in any case its **Nominal Subscription Cash** and its **Initial Closing Cash**, to be invested in the **Limited Partnership** on the **Final Closing Date** by way of a repayment of a portion of its **Construction Credit Facility** to **Hydro** using funds, that are allowed, in accordance with its **KCN Financing Agreement**, to be used for such repayment.

“Final Closing Common Unit Adjustments” means the matters to be completed and things to be done as part of the **Final Closing Transaction** in respect of **Class K Common Units** and holders of **Class K Common Units**, as provided in subsection 5.3.8 of this **JKDA**.

“Final Closing Date” means the first **Business Day** which is one hundred and eighty (180) days following the **Final Completion Date**, or such earlier or later date as may be agreed to by the **Parties**.

“Final Closing Preferred Credit” means an allocation to be made by the **Limited Partnership**, as part of the **Final Closing** on the **Final Closing Date**, by way of a credit to the capital account of each holder of **Class K Preferred Units**, in an amount equal to the lesser of:

- (a) the amount to which such holder would be entitled if the **Limited Partnership** paid a **Preferred Participating Distribution** on the **Final Closing Date** out of the aggregate **Adjusted Gross Revenues** earned up to the **Final Closing Date**, based on such holder’s **Own Cash Invested**, assuming, for the calculation of the **Preferred Holder’s Invested Equity Percentage** used to calculate the **Preferred Participating Distribution**, that the amount of such holder’s **Final Closing Preferred Credit** is nil;
- (b) the difference between such holder’s **Own Cash Invested** and its **Maximum Investment Amount**; and
- (c) 0.8% of its **Proportionate Share** of twenty-five (25%) percent of the **Capital Requirements** incurred as at the **Final Closing Date** and as projected from that date to the completion of construction of the **Keeyask Project**.

“Final Closing Preferred Unit Adjustments” means the matters to be completed and things to be done as part of the **Final Closing Transaction** in respect of **Class K Preferred Units** and holders of **Class K Preferred Units**, as provided in subsection 5.3.7 of this **JKDA**.

“Final Closing Purchase Right” means **Hydro’s** right to purchase all of a **KCN Investment Entity’s Units** on the **Final Closing Date**, as provided in its **KCN Financing Agreement**, and described in subsection 4.6.4 of this **JKDA**.

“Final Closing Sale Right” means a **KCN Investment Entity’s** right to sell all of its **Units** to **Hydro** on the **Final Closing Date**, as provided in its **KCN Financing Agreement**, and described in subsection 4.6.3 of this **JKDA**.

“Final Closing Transaction” means all of the steps to occur and the matters and things to be done or performed on the **Final Closing Date**, as set forth in section 4.6 of this **JKDA**.

“Final Completion Date” means the day on which the last of the turbines comprising the **Keeyask Generating Station** is fully commissioned and comes into service, as evidenced by a commissioning certificate issued in respect of that unit by **Hydro’s** commissioning engineer, or such earlier or later date as may be agreed to by the **Parties**.

“First Completion Date” means the date on which the first of the turbines comprising the **Keeyask Generating Station** is fully commissioned and comes into service, as evidenced by a commissioning certificate issued in respect of that unit by **Hydro’s** commissioning engineer.

“Fiscal Year” means the financial year established from time to time for the **Limited Partnership** in accordance with the terms of the **LP Agreement**.

“FLCNKII” means Fox Lake Cree Nation Keeyask Investments Inc., a corporation that is wholly owned by **Fox Lake** and **Fox Lake** is the sole registered owner of all of the capital stock of the **FLCNKII**.

“Floating Rate” means, for any particular day within a given month, the variable rate of interest, expressed as a percentage rate per annum, equal to the short-term borrowing cost incurred by **Hydro** for such month or, if there is no short-term borrowing cost for that month, the average of the daily **Banker’s Acceptance Rates** for that month, as provided in the **Project Financing Agreement**.

“Force Majeure” means an event or circumstance or series of them, beyond the reasonable control of the party that invokes it, which makes it impossible or illegal for such party to perform its obligation, including, in the event of the foregoing, acts of God, unusually severe weather conditions, strikes or other labour difficulties, war, riots, as well as requirements imposed or actions taken by, or failures to act on the part of **Regulatory Authorities** despite due diligence of such party, as well as accidents, fires, damages to or breakdowns of necessary facilities that are not in any such case as a result of gross negligence or wilful misconduct of such party, or transportation delays, but lack of funds or economic hardship shall not be considered an event or circumstance not within the control of such party.

“Fox Lake” means Fox Lake Cree Nation.

“Fox Lake Adverse Effects Agreement” means the agreement to be entered into between **Hydro** and **Fox Lake** on the date **Fox Lake** signs this **JKDA**, and to be assigned by **Hydro** to the **Limited Partnership** on the **Initial Closing Date**, in respect of the adverse effects of the **Keeyask Project** on **Fox Lake** and its **Members**, which agreement shall be substantially in the

form agreed to in principle by **Hydro** and **Fox Lake**, and approved by its **Members** in the manner provided therein.

“Fox Lake Chief and Council” means the Chief and Council elected and in office from time to time as the governing body of **Fox Lake** pursuant to **Fox Lake’s** Election Code, E-1, as amended from time to time, and recognized as the “council of the band” for **Fox Lake**, as defined in subsection 2(1) of the *Indian Act* (Canada).

“Fox Lake ISA” means the impact settlement agreement made between **Manitoba**, **Hydro** and **Fox Lake** dated December 6, 2004 for the resolution of adverse effects of existing hydropower development as at the date of such agreement.

“FSL” means the normal full supply level, being the normal maximum controlled level of the forebay of the **Keeyask Project**.

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

“Fundamental Construction Features” means the specifically defined features required to be met in the construction of the **Keeyask Project**, as described in subsection 7.2.1 of this **JKDA**.

“Fundamental Operating Features” means the specifically defined features required to be met in the operation of the **Keeyask Project**, as described in subsection 7.2.2 of this **JKDA**.

“GAAP” means accounting principles generally accepted in Canada as recommended by the Canadian Accounting Standards Board or any successor **Person** at such time, applied on a basis consistent with the accounting practices of **Hydro** in effect from time to time.

“General Partner” means a corporation incorporated by **Hydro** under the laws of Manitoba, and to be wholly owned by **Hydro** for the purposes of acting as general partner of the **Limited Partnership** pursuant to the terms of the **Limited Partnership Agreement**.

“Good Utility Practice” means at any particular time the practices, methods and acts engaged in or approved by a significant portion of the hydro-electric utilities located in Canada, other than **Hydro**, at the time, or the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made could be expected to produce the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition, but does not mean and is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but includes a range of acceptable practices, methods or acts.

“Guarantee Fee” means for any particular day, the fee, expressed as a percentage rate per annum, charged as of such day by **Manitoba** to **Hydro**, as a fee that is applicable to **Manitoba’s** guarantee of **Hydro’s Canadian Dollar** borrowings, as provided in the **Project Financing Agreement**.

“**GWh**” means gigawatt-hours, being one million kilowatt hours of electrical energy.

“**HPMA**” means the Hydro Projects Management Association described in the **BNA**, as amended from time to time, which is:

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

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

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

“**Hydro Act**” means *The Manitoba Hydro Act* (Manitoba), as amended from time to time.

“**Hydro Contractual Obligation**” means any agreement, instrument or undertaking to which either **Hydro** (or an affiliate of **Hydro**) is a party or by which **Hydro** (or an affiliate of **Hydro**) or any of **Hydro**’s (or an affiliate of **Hydro**’s) property is bound, the violation of which is reasonably likely to materially impact on the **Integrated Power System** and/or the **Tie-Lines**.

“**Hydro Agreements**” means the **Project Financing Agreement**, the **Construction Agreement** and the **PPA**.

“**Hydro Guarantee**” means a guarantee by **Hydro** in favour of the **Limited Partnership** and the **KCN Investment Entities** of the duties and obligations of the **General Partner** under the **LP Agreement**, on the terms and conditions set forth in section 6.2 of this **JKDA**.

“**Identified Work Packages**” means those work packages identified in Schedule 13-1 planned to be undertaken through **Direct Negotiation Contracts**.

“**Initial Closing**” means the completion of the **Initial Closing Transaction** on the **Initial Closing Date**.

“**Initial Closing Cash**” means, in respect of a **KCN Investment Entity**, an amount equal to its **Proportionate Share** of two million two hundred and fifty thousand (\$2,250,000) dollars, less its **Nominal Subscription Cash**.

“**Initial Closing Conditions**” means all of the conditions to be satisfied prior to or on the **Initial Closing**, as set forth in Article 16.

“Initial Closing Date” means the first **Business Day** that is thirty (30) days following the delivery of a **Construction Notice** by **Hydro**, or such earlier or later date as the **Parties** may agree.

“Initial Closing Purchase Right” means the right and obligation of **Hydro** pursuant to subsection 4.4.5 of this **JKDA** to purchase, on the terms and conditions set forth in section 4.5:

- (a) all of the **Units** owned by the **KCN Investment Entity** of each **Non-Performing Keeyask Cree Nation**; or
- (b) in the event the **Keeyask Cree Nations**, acting by a **KCN Majority**, terminate their obligations under this **JKDA** pursuant to subsection 4.4.4, all of the **Units** owned by each **KCN Investment Entity**.

“Initial Closing Transaction” means all of the transaction steps to occur and the matters and things to be done or performed on the **Initial Closing Date** as set forth in section 4.4, subject to the satisfaction of the **Initial Closing Conditions**.

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

“Initial Pre-Qualification” means a determination by the **Project Manager** as to whether the **Proposer** has established a preliminary business structure in relation to the scope of work available at that time for a work package subject to **Direct Negotiation**.

“Insider Information” means information about the **Keeyask Project** that would be material to a bidder or proposer in **Open Competitive Tendering** or in a proposal process, but is not within the public domain and is not provided in the tender package or otherwise available to contractors bidding or proposing in that **Open Competitive Tendering** or proposal process.

“Integrated Financial Forecast” means the integrated financial forecast, revised at least annually and approved by **Hydro’s** board of directors, setting out **Hydro’s** projected financial results and financial position, based on the then current year’s assumptions, including energy supply and demand, projected interest and escalation rates, projected prices for exported energy, operating and capital forecasts and other factors.

“Integrated Power System” means the system of hydraulic, thermal and other electric generation and power transmission facilities in the Province of Manitoba owned and operated or operated by **Hydro** or from which **Hydro** purchases the energy generated by that facility, which system is interconnected with other power systems, which for greater certainty does not include the **Tie-Lines** interconnecting such system with those other power systems.

“Integrated Power System Environmental Benefits and Attributes” means the environmental and other related credits, offsets, allowances, or benefits, that are attributable to or associated with the generating stations of the **Integrated Power System** and/or with the energy that was sold and delivered from the said generating stations, including air emissions credits and emission

reduction credits, offsets, allowances or benefits, whether promulgated by a governmental authority or by or through any other means, whether they are now available or may become available in the future.

“Interconnection and Operating Agreement” means an agreement or agreements including any study agreements or letter agreements and any amendments to such agreements to be entered into between **Hydro** (Power Supply Business Unit) and **Hydro** (Transmission and Distribution Business Unit) and assigned to the **Limited Partnership** on **Initial Closing** whereby the **Keeyask Project** will be interconnected with the **Integrated Power System**, which agreement shall be in the form published for use under the **Open Access Tariff** at the time the same is to be entered into, and any amendments thereto.

“Interconnection Credit Facility” shall have the meaning ascribed thereto in section 1.1 of the **Project Financing Agreement** and described in clause 5.2.1 (c) of this **JKDA**.

“JKDA” means this Joint Keeyask Development Agreement, including all Schedules and all amendments hereto and extensions hereof.

“JKDA Termination Purchase Right” means the right and obligation of **Hydro** to purchase all of a **KCN Investment Entity’s Units** in the event of a termination of this **JKDA**, as described in section 21.1.3.

“KCN Adverse Effects Agreements” means the **TCN Adverse Effects Agreement**, the **War Lake Adverse Effects Agreement**, the **York Factory Adverse Effects Agreement** and the **Fox Lake Adverse Effects Agreement**.

“KCN Business” means any partnership, corporation, joint venture or other legal entity legally and beneficially owned or controlled by one or more of the **Keeyask Cree Nations** or one or more **Members** that meets the criteria to be considered a **Northern Aboriginal Contractor**.

“KCN Financing Agreement” means an agreement to be entered into between each **KCN Investment Entity** and **Hydro** whereby **Hydro** agrees to provide financing to that **KCN Investment Entity**, which agreement shall be substantially in the form attached hereto as Schedule 1-5, in respect of **CNP’s KCN Investment Entity**, Schedule 1-6, in respect of **York Factory’s KCN Investment Entity**, and Schedule 1-7, in respect of **Fox Lake’s KCN Investment Entity**.

“KCN Investment Entity” means in respect of each **Keeyask Cree Nation**, the wholly owned entity which it will establish for the purposes of investing in the **Limited Partnership**, and which invests in the **Limited Partnership** in the manner provided in this **JKDA**.

“KCN Majority” means, in the context of the **Keeyask Cree Nations**, those **Keeyask Cree Nations** representing a majority of the population, based on band membership, of all of the **Keeyask Cree Nations**, and in the context of the **KCN Investment Entities**, means those **KCN Investment Entities** owned by those **Keeyask Cree Nations** representing a majority of the population, based on band membership, of all of the **Keeyask Cree Nations**.

“KCN Participation Costs” means all costs incurred by a **Keeyask Cree Nation** in connection with the **Keeyask Project** for which the **Keeyask Cree Nation** has been or is entitled to be reimbursed by **Hydro**, including any repayable advances by **Hydro** to a **Keeyask Cree Nation** in respect of reimbursable costs.

“KCN Training Funds” means the seventy-five (75%) per cent of the **Keeyask Training Funds** apportioned, in the manner set forth in clause 12.1.5 (a), among the respective **Keeyask Cree Nations** for the training of **Members**.

“Keeyask Cree Nation” means any one of **TCN, War Lake, York Factory** and **Fox Lake**.

“Keeyask Cree Nations” means **TCN, War Lake, York Factory** and **Fox Lake**.

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

“Keeyask Training Funds” means the forty-five million (\$45,000,000) dollars of **Training Initiative Funds** allocated for the training of **Members**, and **Northern Aboriginals** other than **Members**, for jobs on the **Keeyask Project** and the **Wuskwatim Project**.

“Keeyask Project” means the **Keeyask Generating Station** and all related works, excluding the **Keeyask Transmission Project** and **Bipole III**, but including all channels, excavations, camps, storage areas, local roads and access roads, to be located in the vicinity of Gull Rapids, just upstream from the point at which the Nelson River flows into Stephens Lake, all of which are more particularly described in the **Project Description** and which, if built, will contribute approximately six hundred and ninety-five (695) MW, at rated capacity, to the **Integrated Power System**.

“Keeyask Transmission Facilities” means all incremental transmission facilities and incremental communication-related facilities to be constructed to connect with the **Keeyask Project**, excluding **Bipole III**, but including all northern high voltage alternating current collector transmission lines, switching and transformer stations and related works, as determined by **Hydro** (Transmission and Distribution Business Unit), required to connect the **Keeyask Project** to **Bipole III**, and all north-south alternating current transmission lines, switching and transformer stations and related works, as determined by **Hydro** (Transmission and Distribution Business Unit).

“Keeyask Transmission Facilities Capital Amount” means obligations of the **Limited Partnership** for capital construction costs related to the **Keeyask Transmission Facilities** due to **Hydro** pursuant to either or both of the **Interconnection and Operating Agreement** and the **PPA**, in accordance with the principles set forth in subsection 10.2.2 of this **JKDA**.

“Keeyask Transmission Project” means **Hydro’s** proposed project to develop the **Keeyask Transmission Facilities**.

“Kitche-Waskahigan Trust” means the trust settled by **York Factory** on the terms and for the purposes set out in the Trust Indenture dated the December 8, 1995, made between **York Factory**, the named trustees, **Canada, Manitoba** and **Hydro**.

“Letter of Agreement” means the agreed terms in respect of the **Keeyask Project** that when signed by the **HPMA** and the **Allied Hydro Council** will be attached to and form part of the **BNA** and will amend the **BNA** only for the purposes of the **Keeyask Project**.

“Limited Partner” means each of **Hydro** and each **KCN Investment Entity** which enters into the **LP Agreement** as a limited partner and owns **Units**.

“Limited Partnership” means the Keeyask Hydropower Limited Partnership to be created pursuant to the **LP Agreement** for the purposes of carrying on the **Business**.

“LP Agreement” means the limited partnership agreement to be entered into on the **Subscription Date** between the **General Partner, Hydro**, and each **KCN Investment Entity**, which agreement shall be substantially in the form attached hereto as Schedule 1-1.

“LWR” means the Lake Winnipeg Regulation project to regulate outflow from Lake Winnipeg on the Nelson River west channel, including three (3) excavated channels, and the Jenpeg generating station and control structure, as authorized by the **LWR Licence**.

“LWR Licence” means the interim or final licence to operate the **LWR** granted from time to time by **Manitoba** to **Hydro** under *The Water Power Act* (Manitoba).

“MAC Terms of Reference” means the terms of reference for the **Monitoring Advisory Committee** attached hereto as Schedule 4-7, as amended from time to time.

“Major Capital Costs” means, in respect of all **Fiscal Years** occurring after the **Final Closing Date**, an amount equal to the aggregate of the capital costs incurred by the **Limited Partnership** in a particular **Fiscal Year** in which the **Limited Partnership’s** aggregate capital costs in that year exceed forty million (\$40,000,000) dollars, which forty million (\$40,000,000) dollars will be adjusted annually for inflation, commencing in the year 2019, by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2017 as the base year.

“Management Services Costs” means all direct and indirect costs and expenses of any nature or kind, including all overhead costs and expenses, at cost and without mark-up, incurred or paid for by **Hydro** in providing the **Management Services**.

“Management Services” means the services and functions described in subsection 9.1.1 of this **JKDA**.

“Manitoba” means Her Majesty the Queen in Right of Manitoba.

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

“Material Loss” means damage to or failure of the equipment or structures of the **Keeyask Generating Station** resulting in forced outages of units (including the derating of units), where the loss to the **Limited Partnership**, including for repair costs and lost profits, is in excess of five million (\$5,000,000) dollars for a single event, failure or cause, which amount will be adjusted annually for inflation, commencing in 2009, by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2007 as the base year.

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

“Maximum Investment Amount” means, in respect of a **KCN Investment Entity’s** investment in **Class K Units**, an amount equal to its **Proportionate Share** of two and one half (2.5%) per cent of twenty-five (25%) per cent of the **Capital Requirements** accrued as at the **Final Closing Date**.

“Member” means a person who is, in respect of a **Keeyask Cree Nation**, a “member of a band” as defined in subsection 2(1) of the *Indian Act* (Canada).

“Minimum Cash Investment” means, in respect of a **KCN Investment Entity’s** investment in **Class K Units**, an amount equal to its **Proportionate Share** of twelve million five hundred thousand (\$12,500,000) dollars, including its **Nominal Subscription Cash** and its **Initial Closing Cash**.

“Minimum Distribution Rate” means an annual rate of interest equal to the **Thirty Year Rate**, less one and one-half (1.5%) per cent.

“MKIO” means Manitoba Keewatinook Ininew Okimowin Inc.

“MMF” means Manitoba Metis Federation Inc.

“MOL” means the normal minimum operating level, being the normal minimum controlled level of the forebay of the **Keeyask Project**.

“Monitoring Advisory Committee” means an advisory committee to the **Limited Partnership** to be established by the **Limited Partnership** in accordance with the terms of reference attached hereto as Schedule 4-7, as amended from time to time.

“Moosecoot Trust” means the trust settled by **War Lake** on the terms and for the purposes set out in the Trust Indenture dated April 20, 2004, made between **War Lake**, the named trustees, **Manitoba** and **Hydro**.

“MW” means megawatts, being one million watts of electricity.

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

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

“**NFAAT Material**” means, in respect of the **NFAAT Review**, all materials and documentation, including any supplemental filings and responses to interrogatories, prepared in respect of the **Keeyask Project** to inform decision-makers about the justification of, need for and alternatives to the **Keeyask Project** and the **Keeyask Transmission Project**, and filed by **Hydro** with **Regulatory Authorities**.

“**NFAAT Review**” means a review of the justification of, need for and alternatives to the **Keeyask Project** and the **Keeyask Transmission Project** pursuant to a process to be established by **Manitoba**.

“**Nikanihk Itapowin (Future Vision) Trust**” means the trust settled by **Fox Lake** on the terms and for the purposes set out in the Trust Indenture dated December 6, 2004, made between **Fox Lake**, the named trustees, **Manitoba** and **Hydro**.

“**Nominal Subscription Cash**” means the aggregate subscription price paid by a **Partner** for **Units** purchased by it concurrently with the execution of the **LP Agreement**, as set out in subsection 4.1.3 of this **JKDA**.

“**Non-Performing Keeyask Cree Nation**” means any **Keeyask Cree Nation** and its **KCN Investment Entity** which fails to fully perform and satisfy the **Initial Closing Conditions**, which failure was not waived by **Hydro** in whole or in part, as described in section 4.4.

“**Non-Revolving Credit Facility**” means the credit facility to be made available to the **Limited Partnership** in accordance with the terms of the **Project Financing Agreement**.

“**Northern Aboriginal**” shall have the meaning ascribed thereto in the **BNA** from time to time, and generally means status Indians, Métis, non-status Indians and Inuit who qualify as **Northern Residents**.

“**Northern Aboriginal Contractor**” means a Manitoba business:

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

“**Northern Flood Agreement**” means the agreement made between **Manitoba**, **Hydro**, the Northern Flood Committee, Inc. (acting on behalf of the named five (5) Cree Nations) and **Canada**, dated December 16, 1977, and all Schedules annexed thereto and, for the purposes of

this definition, includes the 1977 Economic Development Agreement among the same parties dated September 1, 1977.

“Northern Purchasing Policy” means the policy adopted by **Hydro** and amended from time to time to guide procurement actions by **Hydro** aimed at promoting business opportunities for **Northern Aboriginals** and northern and Manitoba businesses in relation to work conducted by **Hydro** within northern Manitoba.

“Northern Resident” means a person who has resided in that part of Manitoba north of the boundary set out in Schedule 12-5 hereto for:

- (a) a period of five (5) years accumulatively, or more, and
- (b) a period of six (6) consecutive months, or more immediately prior to being referred to employment or re-employment.

“O & M Services” means all services related to the in-plant operation of the **Keeyask Generating Station**, including the operation of the spillway and the maintenance of the **Keeyask Project**, in accordance with such guidelines, procedures, decisions, practices and policies as may be made or established and as may be amended by **Hydro** from time to time.

“O & M Service Parameters” means that the operation and maintenance of the **Keeyask Project** will be performed in a manner that is integrated with the operation and maintenance of the **Integrated Power System** and is reasonably consistent with the operation and maintenance services **Hydro** performs in respect of other facilities that are also components of the **Integrated Power System** but are wholly owned by **Hydro**.

“Offer” means an offer, commitment letter, term sheet or other document from a **Permitted Party**, or a bank, credit union, insurance company, pension fund or other financial institution in Canada in the business of lending money to commercial borrowers in Canada, or such other proposed lender as may be approved by **Hydro**, offering to provide financing to a **KCN Investment Entity** to finance the payment of its **Election Payment** on the security of the distributions on its **Units**, or other security, but not including security in any form, directly or indirectly, on its **Units** other than the security of the distributions on its **Units**.

“Off-Peak Hours” means the time period which is not captured within the definition of **On-Peak Hours**.

“Off-Peak Rate” means for any particular month, a rate determined on a **Canadian Dollar** per **MWh** basis, in accordance with section 2.2(3) of the **PPA**, that is equal to one hundred and four (104%) per cent of the monthly weighted average adjusted amount **Hydro** (or an affiliate of **Hydro**) as purchaser is obligated to pay for the energy purchased pursuant to the **Off-Peak Transactions** and **Hydro** (or an affiliate of **Hydro**) as seller is entitled to be paid for the energy and/or the applicable **Integrated Power System Environmental Benefits and Attributes** sold pursuant to the **Off-Peak Transactions**, all as provided in the **PPA**.

“Off-Peak Rate Adjustments” means adjustments made by **Hydro** to the **Off-Peak Rate** pursuant to clauses 2.2(3)(b),(c) and (d) of the **PPA**.

“Off-Peak Transactions” shall have the meaning specified in clause 2.2(3)(b) of the **PPA**.

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

“On-Peak Rate” means for any particular month, a rate determined on a **Canadian Dollar** per **MWh** basis in accordance with section 2.2(1) of the **PPA**, that is equal to one hundred and four (104%) per cent of the monthly weighted average adjusted amount **Hydro** (or an affiliate of **Hydro**) as purchaser is obligated to pay for the energy and/or capacity (including ancillary services) purchased pursuant to the **On-Peak Transactions** and **Hydro** (or an affiliate of **Hydro**) as seller is entitled to be paid for the energy and/or capacity (including ancillary services) and/or the applicable **Integrated Power System Environmental Benefits and Attributes** sold pursuant to the **On-Peak Transactions**, all as provided in the **PPA**.

“On-Peak Rate Adjustments” means adjustments made by **Hydro** to the **On-Peak Rate** pursuant to clauses 2.2(1)(b), (c) and (d) of the **PPA**.

“On-Peak Transactions” shall have the meaning specified in clause 2.2(1)(b) of the **PPA**.

“Open Access Tariff” means the Open Access Interconnection Tariff of **Hydro** (or an affiliate of **Hydro**) in effect, as amended or superseded from time to time, pursuant to which a generator is able to interconnect a new generation facility to the **Integrated Power System**.

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

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

“Operating Cost Allocation Parameters” means that the **Operating Services Costs** will be allocated to the **Keeyask Project** in a manner that is reasonably consistent with the manner in which **Hydro** allocates costs in respect of operation and maintenance services, or control, operation and dispatch services, in respect of other facilities that are also components of the **Integrated Power System** but are wholly owned by **Hydro**.

“Operating Credit Facility” means the non-revolving credit facility to be made available by **Hydro** to a **KCN Investment Entity** in accordance with the terms of its **KCN Financing Agreement**.

“Operating Services Costs” means all direct and indirect costs and expenses of any nature or kind, including all overhead costs and expenses, at cost and without mark-up, incurred or paid for by **Hydro** in providing the **O & M Services** and **System Operations Services**.

“Operating Plan” means the annual plan prepared by **Hydro** for the **O & M Services** to be performed in the year.

“Operational Job” means employment positions in the on-going operations of **Hydro**, including any permanent position and any term position of two (2) years or greater in length, but not including any term position less than two (2) years in length, or any casual, seasonal or student position, or any job on or in relation to the construction of the **Keeyask Project**.

“Own Cash Invested” means, in respect of a **KCN Investment Entity**, an amount equal to its **Nominal Subscription Cash**, plus **Initial Closing Cash**, plus its **Final Closing Cash**.

“Partner” means the **General Partner** or any **Limited Partner**.

“PRLC” means the Partners’ Regulatory and Licensing Committee referred to in the **Environmental Protocol**.

“Party” means any one of **Hydro**, **TCN**, **War Lake**, **York Factory** and **Fox Lake** which has approved and signed this **JKDA** in accordance with the **Ratification Protocol**.

“Payment Certification” means a statutory declaration of an authorized officer of a **KCN Investment Entity** disclosing all material information regarding the source of the monies proposed to be used by the **KCN Investment Entity** to make a **Cash Payment**, including notarized true copies of relevant documentation in connection therewith, sufficient to enable the **Limited Partnership** to make a determination that the proposed monies constitute **Permitted Funds**.

“Permitted Funds” means funds used by a **KCN Investment Entity** to make any of its **Cash Payments**:

- (a) in respect of which, no debt or other form of obligation was created, or incurred, or assumed, or suffered to exist, owed directly or indirectly, contingently or

otherwise, by the **KCN Investment Entity** or by its **Keeyask Cree Nation** other than:

- (i) to a **Permitted Party**; or
- (ii) pursuant to a guarantee from a Crown corporation, agency, department, or instrumentality of Canada or Manitoba; or
- (iii) in respect of which there is no recourse by the lender to the **KCN Investment Entity**, or to any securities of or issued by the **KCN Investment Entity** or to any **Units**;

and

- (b) that were not obtained by the **KCN Investment Entity**, directly or indirectly, from any **Person**:
 - (i) due to, or as a result of the **KCN Investment Entity** providing or agreeing to provide at any time, directly or indirectly, a security interest of any nature or kind, including by way of sale, transfer or other form of disposition, in any of its property or assets, tangible or intangible, including its **Units** or any rights under such **Units**, including the right to receive distributions; or
 - (ii) due to or as a result of the **Keeyask Cree Nation** which owns it, providing or agreeing to provide at any time, directly or indirectly, a security interest of any nature or kind, including by sale, transfer or other form of disposition, in the securities of its **KCN Investment Entity**, or any rights under such securities, including the right to receive distributions.

“**Permitted Party**” means:

- (a) a Crown corporation, agency, department, or instrumentality of Canada or Manitoba;
- (b)
 - (i) in respect of the **CNPLP, Tataskweyak Trust** and **Moosecoot Trust**;
 - (ii) in respect of the **YFFNLP, Kitche-Waskahigan Trust**; and
 - (iii) in respect of the **FLCNKII, Nikanihk Itapowin (Future Vision) Trust**;

but does not include any **Person** claiming an interest from or through any such party, whether by sale, transfer, assignment, or other form of disposition, or by operation of law, or in any other manner, directly or indirectly.

“Person” means an individual, partnership, limited partnership, corporation, trust, unincorporated association, syndicate, joint venture, band within the meaning of the *Indian Act* (Canada), or other entity, or a Crown corporation, agency, department, or instrumentality of the government of Canada or the government of any province or municipality in Canada.

“PPA” means the power purchase agreement to be entered into between the **Limited Partnership** and **Hydro** whereby **Hydro** agrees to purchase all of the energy and capacity generated by the **Keeyask Project**, which agreement shall be substantially in the form attached hereto as Schedule 1-4.

“PPA Amendment Review” means a review referred to in section 2.6 (2) of the **PPA** by an **Expert** in accordance with Article 18 of this **JKDA** to determine the amendments, if any, required to the **PPA** due to **Hydro** (or an affiliate of **Hydro**) not having an agreement with the **Limited Partnership** to operate and maintain and/or to control and operate the **Keeyask Project**, including matters related to the dispatch of the **Keeyask Generating Station**, on substantially the same terms and conditions as those contained in Article 9 of this **JKDA**.

“Pre-Closing Assets” means, except as otherwise expressly provided for in this **JKDA**, all of the property and assets, including all agreements, plans, designs, costs, estimates, studies, budgets, projections, forecasts, analyses and research, as well as reports and other information pertaining to costs, margins, bids and other business activities and all intellectual property, including know-how, trade secrets and technical expertise, of **Hydro** with respect to the **Keeyask Project**, of whatever nature or kind, existing or arising prior to the **Initial Closing Date**.

“Pre-Closing Liabilities” means, except as otherwise expressly provided for in this **JKDA**, all of the direct and indirect costs associated with the **Keeyask Project**, of whatever nature or kind, arising, incurred, paid or payable by **Hydro** up to the **Initial Closing Date**, including the unamortized portion of all planning and engineering studies and licensing costs and accrued interest as at April 1, 2002, all planning and engineering studies and licensing costs incurred after April 1, 2002, all early advances of **Keeyask Training Funds**, all negotiating and consultation costs, including **KCN Participation Costs**, and all interest accrued on all such costs.

“Pre-Construction Costs” means the aggregate of the capital costs of the **Keeyask Project** incurred after March 31, 2009, up to the date of the **Construction Start**, plus interest accrued or accruing on such capital costs after March 31, 2009, up to the **Final Closing Date**, but does not include:

- (a) any costs incurred to construct components of the supporting infrastructure of the **Keeyask Project**, including upgrades to Provincial Road 280;

- (b) any interest accruing on the aggregate capital costs of the **Keeyask Project** in the period during which interest is suspended pursuant to subsection 8.1.9 of this **JKDA**;
- (c) any capital costs of the **Keeyask Project** incurred after December 31, 2015; and
- (d) any interest accruing on the aggregate capital costs of the **Keeyask Project** after December 31, 2013, up to the date of the **Construction Start**.

“Preferential Distribution Notice” means a notice to be delivered to the **General Partner** by a holder of **Class K Common Units** electing to have its **Class K Common Units** treated on and after the **Final Closing Date** as **Class K Preferred Units** and to receive preferential distributions on such **Units**, in accordance with the provisions of the **LP Agreement**.

“Preferred Holder’s Invested Equity Percentage” means, in respect of a holder of **Class K Preferred Units**, the formula:

$$(A + B) / C$$

where,

A is such holder’s **Own Cash Invested** as at the **Final Closing Date**;

B is the amount of such holder’s **Final Closing Preferred Credit**; and

C is twenty five (25%) per cent of the **Capital Requirements** as at the **Final Closing Date**.

“Preferred Minimum Distribution” means an annual, non-cumulative, minimum distribution by the **Limited Partnership** to holders of **Class K Preferred Units**, for **Fiscal Years** ending after the **Final Closing Date**, in an amount equal to such **KCN Investment Entity’s Own Cash Invested** multiplied by the **Minimum Distribution Rate**, calculated annually, not in advance, commencing on the first **Anniversary Date** and continuing annually thereafter, as provided in the **LP Agreement**.

“Preferred Participating Distribution” means an annual distribution by the **Limited Partnership** to holders of **Class K Preferred Units** for **Fiscal Years** ending after the **Final Closing Date** in which there are **Adjusted Gross Revenues** in the year, in an amount equal to, for each one (1%) per cent of such holder’s **Preferred Holder’s Invested Equity Percentage**:

- (a) 0.8% of **Adjusted Gross Revenues** less than or equal to two hundred and fifty million (\$250,000,000) dollars; plus
- (b) 1.2% of **Adjusted Gross Revenues** greater than two hundred and fifty million (\$250,000,000) dollars but less than or equal to one billion (\$1,000,000,000) dollars; plus

- (c) 1.6% of **Adjusted Gross Revenues** greater than one billion (\$1,000,000,000) dollars; less
- (d) the **Major Capital Costs**, if any, in that **Fiscal Year**, multiplied by one quarter of one (0.25%) per cent, provided that if in any **Fiscal Year** the **Major Capital Costs** multiplied by one quarter of one (0.25%) per cent, is greater than the **Preferred Participating Distribution** in respect of that year, the amount of the difference shall be carried forward and deducted from such holder's **Preferred Participating Distribution**, if any, in respect of the immediately following **Fiscal Year**, and continuing annually thereafter until the amount of the difference is eliminated.

“Preferred Unit Adjustment Formula” means in respect of a **KCN Investment Entity** holding **Class K Preferred Units** on the **Final Closing Date**, the formula:

$$A - (B \times C / D)$$

where,

A is the number of **Class K Common Units** owned by the particular **KCN Investment Entity** on the **Initial Closing Date**;

B is the aggregate number of all **Class M**, **Class K** and **Class E Units** issued and outstanding on the **Initial Closing Date**;

C is the particular **KCN Investment Entity's Own Cash Invested**, plus its **Final Closing Preferred Credit**, at the **Final Closing Date**; and

D is twenty-five (25%) of the **Capital Requirements** accrued as at the **Final Closing Date**.

“Principals’ Memorandum” means a Memorandum of Understanding entered into between **Hydro** and the **Chief** of each **Keeyask Cree Nation** on September 14, 2001, which sets out the negotiating principles for concluding this **JKDA**, according to the principles outlined in the **Agreement in Principle**, and provides for a sharing of the percentage ownership interest available to be acquired by the **Keeyask Cree Nations**.

“Process Proposal” means the negotiating principles and process proposal entered into between **Hydro** and the **Chief** of each **Keeyask Cree Nation** on October 15, 2002, providing for negotiating principles and process arrangements to finalize this **JKDA**.

“Project Description” means the detailed description of the **Keeyask Project**, attached hereto as Schedule 7-1.

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

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

“Proportionate Share” means, in respect of **CNP**, sixty (60%) per cent, and in respect of each of **York Factory** and **Fox Lake**, twenty (20%) per cent.

“Proposal” means a completed proposal submitted by a **Proposer** to the **Project Manager** in response to a **Request for Direct Negotiation Proposal**.

“Proposal Review Process” means the stages and criteria set forth in Schedule 13-2 to be applied by the **Project Manager** in negotiating **Direct Negotiation Contracts**.

“Proposed Letter of Agreement” means the proposed **Letter of Agreement** agreed to between **Hydro** and the **Keeyask Cree Nations** as the basis for negotiations between the **HPMA** and the **Allied Hydro Council**, substantially in the form attached hereto as Schedule 12-3.

“Proposer” means a **Keeyask Cree Nation** or the **KCN Business** designated by a **Keeyask Cree Nation** for the purpose of participating in the **Proposal Review Process** for any **Work**.

“Qualified Nominee” means an individual who is qualified to act as a director in accordance with the requirements set out in *The Corporations Act* (Manitoba) and who, for so long as section 7 of the **Hydro Act** is in effect, other than by virtue of being a **Member**, or a director of the **General Partner** as the nominee of a **Keeyask Cree Nation**, or a member of **Chief and Council** of a **Keeyask Cree Nation**:

- (a) is not a director, officer, employee, agent, advisor to, or representative of, a **KCN Investment Entity**, or a **KCN Business** which is a party to a **Direct Negotiation Contract**; and
- (b) does not receive any payment in any form directly or indirectly from a **KCN Investment Entity**, or a **KCN Business** which is a party to a **Direct Negotiation Contract**.

“Ratification Protocol” means the agreement entered into between the **Parties** dated July 29, 2008, as amended from time to time, setting out, among other things, agreed upon terms for the filing of the **Environment Act Proposal Form**, agreed upon processes for the ratification of this **JKDA** and, following ratification, agreed upon terms for the execution of this **JKDA**.

“Referendum” means, with respect to each **Keeyask Cree Nation**, the submission of this **JKDA** to a vote of its **Members** in the manner described in Article 3 of the **Ratification Protocol**.

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

“Reimbursement Policy” means **Hydro’s** policy dated July 11, 2007, as amended from time to time, setting out guidelines and specific criteria with respect to the reimbursement of reasonable costs associated with future development related processes with participating parties.

“Reply” means a written reply to a **Claim** which sets out in detail the **Respondent’s** position with respect to the **Claim**.

“Request for Direct Negotiation Proposals” means requests for proposals issued by the **Project Manager** in respect of contracts available for **Direct Negotiation**.

“Reservoir Clearing Plan” means the plan for the clearing of the reservoir of the **Keeyask Generating Station**, substantially in the form attached hereto as Schedule 11-1.

“Respondent” means each party who receives a **Claim Notice**.

“Restart Notice” means a notice in writing to be given by the **Limited Partnership** to each **KCN Investment Entity** that it intends to restart construction of the **Keeyask Project** on a date not earlier than thirty (30) days from the date the notice is given.

“Revenue Advance” means an advance of funds made by **Hydro** to be used for activities related to pre-project training, as follows:

- (a) in respect of **TCN**, the sum of three hundred and fifty thousand (\$350,000) dollars on or about December 14, 2000 and the sum of one million one hundred and twenty five thousand (\$1,125,000) dollars on or about May 24, 2001;
- (b) in respect of **Fox Lake**, the sum of two hundred seventy nine thousand (\$279,000) dollars on or about September 9, 2002 and the sum of two hundred thirty nine thousand (\$239,000) dollars on or about December 13, 2002; and
- (c) in respect of **War Lake**, the sum of one hundred and twenty five thousand (\$125,000) dollars on or about December 2, 2003.

“Revenue Advance Agreement” means in respect of each of **CNP** (applicable to **TCN** and **War Lake**) and **Fox Lake** and their respective **KCN Investment Entities**, an agreement amending, consolidating and restating the terms for repayment of the **Revenue Advances**, which agreements shall be substantially in the form attached hereto as Schedules 12-1 and 12-2, respectively.

“Revolving Credit Facility” means the credit facility to be made available to the **Limited Partnership** on the terms set forth in the **Project Financing Agreement** and described in section 5.2 of this **JKDA**.

“Scheduled Confidentiality Agreements” means the confidentiality agreements to be entered into from time to time as provided in subsection 24.2.1 of this **JKDA**, substantially in the form of the confidentiality agreement attached hereto as Schedule 24-1, in respect of individuals representing **CNP**, Schedule 24-2, in respect of individuals representing **York Factory**, and Schedule 24-3, in respect of individuals representing **Fox Lake**.

“Services” means the **Management Services**, the **O & M Services** and the **System Operations Services**.

“Special Reserves” means that portion of the **Limited Partnership’s** retained earnings allocated by the **General Partner** to meet the estimated future costs of major capital expenditures planned to be incurred no later than five (5) years from the date when such reserves were initially established, save and except for allocations to meet the estimated future capital costs of de-commissioning the **Keeyask Project**, which can be included in such allocation provided they are included no earlier than twenty-five (25) years prior to the expected date of de-commissioning, and such other amounts as are designated by the **Partners** in accordance with the **LP Agreement**.

“Split Lake Resource Management Area” means the resource management area shown on Schedule 5.1 to the **TCN 1992 Agreement**, and includes the rivers and lakes therein.

“Subscription Agreement” means the form of subscription for **Units** for each **Partner**, substantially in the form attached hereto as Schedules 4-1 through 4-5, respectively.

“Subscription Date” means the date which is thirty (30) days prior to the date, as determined by the **PRLC** in accordance with the **Environmental Protocol**, on which the **Limited Partnership** intends to file the **EIS** with the **Regulatory Authorities**, or such earlier or later date as the **Parties** may agree.

“Substantial Construction Start” means, in relation to the construction of the **Keeyask Project**, the substantial completion of the access road and camp infrastructure.

“System Operations Services” means all services related to the control and operation of the **Keeyask Generating Station**, including the dispatch of the **Keeyask Generating Station**, not including **O & M Services**.

“System Operations Service Parameters” means that the **System Operations Services** will be performed:

- (a) in a manner that is integrated with the control and operation and dispatch of the **Integrated Power System** and is reasonably consistent with the system operation

services **Hydro** performs in respect of other facilities that are also components of the **Integrated Power System** but are wholly owned by **Hydro**; and

- (b) in a manner that is not materially prejudicial to the reliability of, or to the economic benefits to be derived from, the **Keeyask Project**, except to the extent such services are performed in a manner that is reasonably intended to benefit the reliability of, or the economic benefits to be obtained from, the **Integrated Power System** as a whole and is reasonably consistent with system operation services that **Hydro** would have performed had the **Keeyask Project** been wholly owned by **Hydro**.

“Tataskweyak Trust” means the trust settled by **TCN** on the terms and for the purposes set out in the Trust Indenture dated June 24, 1992, made between **TCN**, the named trustees, **Canada**, **Manitoba** and **Hydro**.

“TCN” means Tataskweyak Cree Nation, formerly known as Split Lake Cree Nation.

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

“TCN Adverse Effects Agreement” means the agreement to be entered into on the **Date of this JKDA** between **Hydro** and **TCN** and to be assigned by **Hydro** to the **Limited Partnership** on the **Initial Closing Date**, in respect of the adverse effects of the **Keeyask Project** on **TCN** and its **Members**, which agreement shall be substantially in the form agreed to in principle by **Hydro** and **TCN**, and approved by its **Members** in the manner provided therein.

“TCN 1992 Agreement” means the agreement made between **Canada**, **Manitoba**, **Hydro** and **TCN** dated June 24, 1992 for settlement of claims and the implementation of the parties’ respective obligations under the **NFA**.

“TCN 1996 Agreement” means the agreement made between **TCN** and **Hydro** on May 14, 1996, with an effective date of March 1, 1996, providing for pre-determined compensation in respect of certain water regime events.

“Ten Year Rate” means the rate described in section 1.1 of the **KCN Financing Agreements**.

“Thirty Year Rate” means the rate described in section 1.1 of the **Project Financing Agreement**.

“Tie-Lines” means at any particular time the transmission interconnection facilities which cross the border of the Province of Manitoba and any of the borders of Minnesota, North Dakota, Ontario and Saskatchewan, and which interconnect the **Integrated Power System** with other power systems in those states and provinces.

“Training Consortium” means Wuskwatim and Keeyask Training Consortium Inc.

“Training Initiative” means the Hydro Northern Training and Employment Initiative.

“Training Initiative Funds” means the sum of sixty two million (\$62,000,000) dollars contributed to the **Training Initiative** by a number of parties as described in section 12.1.3.

“UMA” means a unanimous members’ agreement made between all of the members of **WKTC** dated September 29, 2004.

“Unit” means a unit representing an interest in the **Limited Partnership**.

“War Lake” means War Lake First Nation.

“War Lake Adverse Effects Agreement” means the agreement to be entered into on the **Date of this JKDA** between **Hydro** and **War Lake**, and to be assigned by **Hydro** to the **Limited Partnership** on the **Initial Closing Date**, in respect of the adverse effects of the **Keeyask Project** on **War Lake** and its **Members**, which agreement shall be substantially in the form agreed to in principle by **Hydro** and **War Lake**, and approved by its **Members** in the manner provided therein.

“War Lake Chief and Council” means the Chief and Council elected and in office from time to time as the governing body of **War Lake** pursuant to **War Lake’s** Election Code, E-1, as amended from time to time, and recognized as the “council of the band” for **War Lake**, as defined in subsection 2(1) of the *Indian Act* (Canada).

“War Lake Participation Agreement” means the participation agreement entered into between **TCN, Hydro** and **War Lake** on July 9, 2003.

“War Lake 2005 Agreement” means the agreement made between **Manitoba, Hydro** and **War Lake**, dated March 30, 2005, for the resolution of adverse effects of then existing hydropower development.

“Waterways Management Program” means the program for managing issues arising from the use of waterways impacted by the impoundment of waters for the **Keeyask Generating Station**, substantially in the form attached hereto as Schedule 11-2.

“WKTC” means the Wuskwatim Keeyask Training Consortium.

“Work” means a work package subject to **Direct Negotiation** as specifically outlined in a **Request for Direct Negotiation Proposal**.

“Working Group on Operational Jobs” means the working group or groups established or to be established between **Hydro** and **CNP, York Factory** and **Fox Lake** to explore ways in which the agreed upon employment targets for **Operational Jobs** set forth in subsection 12.7.1 of this **JKDA** may be achieved, and to establish a basis for an ongoing and mutually beneficial

relationship between **Hydro** and **Members** of each of **CNP**, **York Factory** and **Fox Lake**, with respect to employment opportunities.

“Wuskwatim Project” means the hydro-electric generating station and related works to be located on, and adjacent to, the Burntwood River at Taskinigup Falls near Wuskwatim Lake.

“YFFNLP” means the York Factory First Nation Limited Partnership created pursuant to a limited partnership agreement dated the 15th day of May, 2009, with 5687439 Manitoba Ltd. as general partner, and **York Factory** as the limited partner.

“York Factory” means the York Factory First Nation.

“York Factory Adverse Effects Agreement” means the agreement to be entered into between **Hydro** and **York Factory** on the date **York Factory** signs this **JKDA**, and to be assigned by **Hydro** to the **Limited Partnership** on the **Initial Closing Date**, in respect of the adverse effects of the **Keeyask Project** on **York Factory** and its **Members**, which agreement shall be substantially in the form agreed to in principle by **Hydro** and **York Factory**, and approved by its **Members** in the manner provided therein.

“York Factory Chief and Council” means the Chief and Council elected and in office from time to time as the governing body of **York Factory** pursuant to **York Factory’s** custom election code, and recognized as the “council of the band” for **York Factory**, as defined in subsection 2(1) of the *Indian Act* (Canada).

“York Factory Comprehensive Agreement” means the comprehensive implementation agreement made between **Canada**, **Manitoba**, **Hydro** and **York Factory** dated December 8, 1995, for the settlement of claims and the implementation of the parties’ respective obligations under the **NFA**.

Currency

1.2.3 Unless otherwise indicated, all dollar amounts in this **JKDA** are expressed in Canadian funds.

Metric Measure

1.2.4 The International System of Units (the metric system) is being used for the design and will be used for the operation of the **Keeyask Project**. Subject to any legislative requirement, in the event of a conflict between metric and imperial measure, metric measure shall prevail, except where the original document, data or measuring device was in imperial, then imperial measure shall prevail. The **Parties** agree that the metric conversion rate to be used for purposes of this **JKDA** shall be one foot equals 0.3048 metres and 1 metre equals 3.28084 feet. For convenience, approximate conversions to imperial measures, to one decimal place (although this is not intended to imply any greater degree of accuracy), are provided in parentheses.

Water Levels and Measurements

1.2.5 The water level in the forebay of the **Keeyask Project** will be measured by two (2) or more gauges established at convenient locations on the forebay and will be calculated as the average of all hourly water levels measured at such gauges during a calendar day, adjusted to exclude the effects of wind and waves. The hourly water levels measured at each gauge for any particular hour in a day will be the arithmetic mean of water levels recorded at the gauge during the hour.

Wind and Waves Excluded

1.2.6 Wherever there is a reference in this **JKDA** to a water level or a water level fluctuation, it shall be deemed to be followed by the phrase “the effects of wind and waves excluded”.

Governing Law

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

No Presumption

1.2.8 The **Parties** have endeavoured to ensure that the terms of this **JKDA** are as clear as possible. In interpreting this **JKDA**, except where expressly provided there shall be no presumption in favour of or against any **Party**.

Statutory References

1.2.9 A reference in this **JKDA** to a statute includes all rules and regulations made pursuant to such statute and unless otherwise specified, includes the provisions of any statute or regulation or rule which amends, replaces, supplements or supersedes any such statute or any such regulation or rule.

Time of Essence

1.2.10 Time shall be of the essence of this **JKDA**.

Business Day

1.2.11 Any action or payment required or permitted to be taken or made hereunder on a day that is not a **Business Day** may be made or taken on the next following **Business Day**.

Computation of Time

1.2.12 Unless otherwise expressly provided in this **JKDA**, time periods referred to in this **JKDA** shall be computed by including the first day and excluding the last day.

ARTICLE 2

OVERVIEW

2.1 PURPOSE

Overview

2.1.1 This Article provides an overview of the arrangements between the **Parties** set forth in this **JKDA**.

Conflict

2.1.2 The provisions of this Article 2 are not intended to limit in any way any other provision of this **JKDA**. In the event of a conflict between any provision of this Article 2 and any other provision of this **JKDA**, such other provision shall prevail, and in the event of a conflict between the provisions of this Article 2 and the provisions of any of the **Project Financing Agreement**, the **KCN Financing Agreements** or the **LP Agreement**, as applicable, the provisions of the applicable agreement shall prevail.

2.2 LIMITED PARTNERSHIP

Limited Partnership

2.2.1 The **Parties** will establish the **Limited Partnership** to complete the planning and design of the **Keeyask Project** and to carry on the **Business**. The **General Partner** will be a wholly-owned subsidiary of **Hydro**. **Hydro**, the **General Partner** and each of the **KCN Investment Entities** will invest in the equity of the **Limited Partnership**. **Hydro** and the **General Partner** will own at least seventy-five (75%) per cent of the equity of the **Limited Partnership** and the **Keeyask Cree Nations**, through their respective **KCN Investment Entities**, will have the right to own up to twenty-five (25 %) per cent.

Representation on Board of General Partner

2.2.2 The **Keeyask Cree Nations** will have the right to have nominees appointed to the board of directors of the **General Partner**, as described in section 4.8 of this **JKDA**.

Limited Partnership Advisory Committees

2.2.3 The **Limited Partnership** will have a **Construction Advisory Committee** and a **Monitoring Advisory Committee** as described in section 4.7 of this **JKDA**.

Capital of the Limited Partnership

2.2.4 Twenty-five per cent (25%) of the **Capital Requirements** will be funded by equity investments from the **Partners** and seventy-five (75%) per cent will be funded by debt financing to be provided to the **Limited Partnership** by **Hydro** pursuant to the **Project Financing Agreement**, but the debt portion will be allowed to rise to eighty-five (85%) per cent of the **Capital Requirements** in the first ten (10) years after **Final Closing**, as described in Article 5 of this **JKDA**.

Equity Capital Requirements

2.2.5 Subject to subsection 2.2.4, the **General Partner**, **Hydro** and the **KCN Investment Entities** will provide twenty-five (25%) per cent of the **Capital Requirements** by subscribing and paying for **Units** and becoming partners in the **Limited Partnership** and by making additional capital contributions to the **Limited Partnership** from time to time upon demand made by the **General Partner**, on the terms set out in the **LP Agreement** and described in section 4.1 and section 5.3 of this **JKDA**.

KCN Investment Entity Own Cash Invested

2.2.6 Each **KCN Investment Entity** must invest its **Nominal Subscription Cash** on the **Subscription Date** as described in subsection 4.1.3 of this **JKDA**, must invest its **Initial Closing Cash** on the **Initial Closing Date** as described in subsection 4.4.1 of this **JKDA**, and on the **Final Closing Date** must invest its **Final Closing Cash**, being the remainder of its **Proportionate Share** of either twenty-five million (\$25,000,000) dollars, or such lesser amount as it determines, but not to be less than its **Proportionate Share** of twelve million five hundred thousand (\$12,500,000) dollars, as described in subsection 5.3.5 of this **JKDA**.

Election to Treat Class K Common Units as Class K Preferred Units

2.2.7 Each **KCN Investment Entity's** subscription for **Units** in the **Limited Partnership** on the **Subscription Date** will be for **Class K Common Units**. It may elect to treat its **Class K Common Units** as **Class K Preferred Units** and receive preferential distributions by delivering a **Preferential Distribution Notice** at least sixty (60) days prior to the **Final Closing Date**. Subject to the closing of the **Final Closing Transaction**, thereafter such **KCN Investment Entity** will be entitled to receive distributions from the **Limited Partnership** in a year equal to the larger of the **Preferred Participating Distribution** and the **Preferred Minimum Distribution**, as described in section 5.3 of this **JKDA**.

Final Closing Preferred Credit

2.2.8 As part of the **Final Closing Transaction**, the **Limited Partnership** will provide each **KCN Investment Entity** which delivers a **Preferential Distribution Notice**, with a **Final Closing Preferred Credit**, to contribute towards the capital required to reach its **Maximum Investment Amount**, as described in section 5.3 of this **JKDA**.

Class K Unit Adjustments

2.2.9 If on the **Final Closing Date** a **KCN Investment Entity's Own Cash Invested** plus, if applicable, its **Final Closing Preferred Credit**, is less than its **Maximum Investment Amount**, its interest in the **Limited Partnership** will be reduced proportionately, and the corresponding loans under the **Construction Credit Facility** will be forgiven, as described in section 5.3 of this **JKDA**.

KCN Investment Entity Loans

2.2.10 The **Construction Credit Facility** provided by **Hydro** to each **KCN Investment Entity** will fund **Cash Calls** during the **Construction Period** and up to the **Final Closing Date**, and **Hydro** will provide an **Operating Credit Facility** to fund **Cash Calls** following the **Final Closing Date**. **Hydro** will also provide a **Common Unit Distribution Credit Facility** to provide each **KCN Investment Entity** holding **Class K Common Units** with a cash flow on its **Own Cash Invested** at the **Minimum Distribution Rate**, as described in section 5.3 of this **JKDA**.

Management Services

2.2.11 **Hydro** will provide administrative and management services for the **General Partner**, on the terms set out in Article 9 of this **JKDA**.

Construction Services

2.2.12 **Hydro** will act as **Project Manager** to construct the **Keeyask Project**, on the terms set out in the **Construction Agreement**.

Operating Services

2.2.13 **Hydro** will operate and maintain the **Keeyask Project**, and control the operation and dispatch of the **Keeyask Generating Station**, on the terms set out in Article 9 of this **JKDA**.

Power Purchase

2.2.14 **Hydro** will purchase from the **Limited Partnership** all of the energy and capacity of the **Keeyask Generating Station**, on the terms set out in the **PPA** and in Article 10 of this **JKDA**.

Illustration of Limited Partnership Structure

2.2.15 The figure attached as Schedule 2-1 illustrates the **Limited Partnership** structure and contractual arrangements with **Hydro**.

2.3 ENVIRONMENTAL AND REGULATORY LICENSING

Environmental Licensing

2.3.1 The **Parties** will undertake the final environmental planning for the development of the **Keeyask Project**, including the preparation of the **EIS** for submission to the **Regulatory Authorities** in accordance with the **Environmental Protocol**, with the **Limited Partnership** as the proponent, as described in Article 3 of this **JKDA**.

NFAAT Review

2.3.2 **Hydro** will be responsible for complying with requirements related to a **NFAAT Review**, as described in Article 3 of this **JKDA**.

2.4 CONSTRUCTION OF THE PROJECT

Time for Construction Start

2.4.1 Subject to the satisfaction of the conditions referred to in subsection 2.4.2, the **Limited Partnership** will have up to six (6) years, from the date of issue of the last of the **Closing Licences** required to start construction, to make a **Substantial Construction Start**.

Conditions for a Construction Start

2.4.2 The **Limited Partnership** may not commence construction of the **Keeyask Project** unless:

- (a) such of the **Closing Licences** as are required to commence construction have been obtained;
- (b) no injunctions prohibiting construction have then been issued; and
- (c) the **Initial Closing** has occurred;

all as described in Article 8 of this **JKDA**.

Decision Not to Proceed with Construction

2.4.3 The **Limited Partnership** may determine, at any time prior to the date on which the pouring of concrete for the concrete structures comprising the principal structures begins, that it does not wish to proceed with the construction of the **Keeyask Project**, in which event this **JKDA** will terminate in the manner provided in Article 21 of this **JKDA**.

Construction Halt and Restart

2.4.4 As long as it has made a **Substantial Construction Start** within six (6) years of obtaining the **Closing Licences** required to start construction, the **Limited Partnership** may halt construction for up to five (5) years, as described in Article 8 of this **JKDA**.

Project Description and Fundamental Features

2.4.5 The **Keeyask Project** will be constructed generally in the manner set forth in the **Project Description**, provided that the **Project Description** may be changed by the **Limited Partnership** as it deems appropriate, as described in subsection 7.1.3. Notwithstanding the foregoing, no change to the **Project Description** which would result in a change to any **Fundamental Feature** may be made without the prior written consent of **TCN** and, in the case of a **Fundamental Operating Feature** described in clause 7.2.2 (a), without the prior written consent of **York Factory**, as described in Article 7 of this **JKDA**.

2.5 ADVERSE EFFECTS

2.5.1 The **Limited Partnership** and **Hydro** will enter into arrangements with each **Keeyask Cree Nation** to address adverse effects arising from the **Keeyask Project** on the terms set out in the **KCN Adverse Effects Agreements**, as described in Article 11 of this **JKDA**.

2.6 EMPLOYMENT, TRAINING AND BUSINESS OPPORTUNITIES

Pre-Project Training

2.6.1 **Members** have had and will continue to have opportunities for pre-project training for jobs on the **Wuskwatim Project** and on the **Keeyask Project**, as described in section 12.1 of this **JKDA**.

Construction Employment

2.6.2 There will be opportunities for **Members** to be employed by contractors, including **KCN Businesses**, in the construction of the **Keeyask Project**. The **Parties** have agreed to a target of six hundred and thirty (630) person-years of employment for the employment of **Members** of the **Keeyask Cree Nations** on the **Keeyask Project**, and to other construction employment measures, as described in Article 12 of this **JKDA**.

Operational Jobs

2.6.3 In addition to a construction employment target as described in subsection 2.6.2, the **Keeyask Cree Nations** and **Hydro** have agreed to a twenty (20) year target, from the **Date of this JKDA**, of approximately one hundred (100) **TCN Members**, ten (10) **War Lake Members** and thirty-six (36) **Members** for each of **York Factory** and **Fox Lake**, for the

employment of **Members in Operational Jobs**, including jobs in the on-going operations of the **Keeyask Project**, as described in section 12.7 of this **JKDA**.

Business Opportunities During Construction

2.6.4 The **Keeyask Project** provides opportunities to expand the number, capacity, diversity and viability of **KCN Businesses**. The **Identified Work Packages** set out in Schedule 13-1, and supplemental and other work packages referred to in Article 13, will be available for **Direct Negotiation** with a **Keeyask Cree Nation** or a **KCN Business** on the terms set out in Article 13 of this **JKDA**.

ARTICLE 3

ENVIRONMENTAL AND REGULATORY LICENSING

3.1 ENVIRONMENTAL LICENSING

Participation in Regulatory Process

3.1.1 From the **Date of this JKDA** up to the **Initial Closing Date**, **Hydro** and each one of **CNP, York Factory** and **Fox Lake** whose **Members** authorize the signing of this **JKDA** in accordance with the **Ratification Protocol** attached hereto as Schedule 20-1, and who sign this **JKDA**, shall jointly undertake, in accordance with the **Environmental Protocol** attached hereto as Schedule 3-1, such activities as may be necessary or desirable to cause the **Closing Licences** to be issued in the name of the **Limited Partnership**, including:

- (a) the completion of the **Environmental Impact Assessment**;
- (b) the preparation and filing of the **EIS** with **Regulatory Authorities**; and
- (c) participating in any hearings that are part of the process followed by a **Regulatory Authority** related to the **EIS**.

Proponent for Environmental Licence

3.1.2 The **Limited Partnership** will be the proponent of the **Keeyask Project** for the purposes of *The Environment Act* (Manitoba) and the *Canadian Environmental Assessment Act* (Canada).

Licence to Use Property

3.1.3 The **Limited Partnership** will have a licence from **Hydro**, and **Hydro** hereby grants such a licence, to use such of the **Pre-Closing Assets** as the **PRLC** considers necessary or desirable for the purposes of obtaining the **Closing Licences**, including for the preparation and filing of the **EIS** and participation in public regulatory hearings. Ownership of the **Pre-Closing Assets** shall remain with **Hydro** until the **Initial Closing Date**, at which time, subject to the satisfaction of the **Initial Closing Conditions**, ownership of the **Pre-Closing Assets**, together with the **Pre-Closing Liabilities**, shall be transferred to the **Limited Partnership** as part of the **Initial Closing Transaction**.

NFAAT Review

3.1.4 **Manitoba** will require a **NFAAT Review** of the **Keeyask Project**, possibly in conjunction with other projects of **Hydro**, as determined by **Manitoba**, to be conducted on terms and conditions, and by a **Regulatory Authority**, yet to be determined. **Hydro** will be solely

responsible for the **NFAAT Review**, including preparing and filing **NFAAT Material** with the appropriate **Regulatory Authority** and preparing such submissions and attending such hearings as may be required for the purposes of the **NFAAT Review**, all with a view to obtaining a favourable decision in the **NFAAT Review** on terms consistent with this **JKDA**.

Sharing of NFAAT Material

3.1.5 **Hydro** will share with the **Keeyask Cree Nations** those parts of **Hydro's** initial submission in respect of the **NFAAT Review** that are materially related to the **Keeyask Project** prior to filing the same with the applicable **Regulatory Authority**.

Assistance

3.1.6 The **Keeyask Cree Nations** each agree to cooperate with **Hydro** and to provide **Hydro** with such assistance regarding the costs, benefits and impacts of the **Keeyask Project** in relation to it and its **Members** as reasonably may be requested by **Hydro** for the purposes of the **NFAAT Review**.

Information to Canada and Manitoba

3.1.7 The **Parties** agree to provide such information with respect to the **Keeyask Project** to **Canada** and **Manitoba** as reasonably may be required to enable **Canada** and **Manitoba** to consult with Aboriginal people pursuant to section 35 of the *Constitution Act, 1982* (Canada).

3.2 LICENCES

Closing Licences

3.2.1 The **Limited Partnership** will provide a copy of the **Closing Licences**, or any amendment to a **Closing Licence**, to **Hydro** and to each **Keeyask Cree Nation** immediately upon receipt of the same from the applicable **Regulatory Authority**.

Acceptance of Closing Licences

3.2.2 If, upon receipt of a **Closing Licence**, or any amendment to a **Closing Licence**, other than an amendment requested by the **Limited Partnership** pursuant to subsection 3.2.4:

- (a) **TCN**, acting reasonably, believes that the terms and conditions of such **Closing Licence**, or such amendment, if implemented or complied with, would result in an unacceptable change to a **Fundamental Feature**; or
- (b) **York Factory**, acting reasonably, believes that the terms and conditions of such **Closing Licence**, or such amendment, if implemented or complied with, would

result in an unacceptable change to the **Fundamental Operating Feature** described in clause 7.2.2 (a) of this **JKDA**;

then either or both of **TCN** or **York Factory**, as the case may be, shall have sixty (60) days from the date of receipt of such **Closing Licence**, or such amendment, to deliver a **Deficiency Notice** to the **Limited Partnership**, and if it fails to do so within such sixty (60) day period it shall be deemed to have accepted the terms and conditions of such **Closing Licence**, or such amendment, as the case may be.

Subsequent Changes to Closing Licences

3.2.3 Subject to subsection 3.2.7, once issued, no change or changes will be sought by the **Limited Partnership** to a **Closing Licence** or to any of the terms and conditions of a **Closing Licence**, which **TCN**, acting reasonably, believes would result in an unacceptable change to a **Fundamental Feature** or which **York Factory**, acting reasonably, believes would result in an unacceptable change to the **Fundamental Operating Feature** described in clause 7.2.2 (a) of this **JKDA**.

Process for Changes

3.2.4 Notwithstanding section 3.2.3, if the **Limited Partnership** wishes to seek a change or changes to a **Closing Licence** from the applicable **Regulatory Authority**, the **Limited Partnership** shall give written notice of such proposed change or changes to each of **TCN** and **York Factory**, in sufficient detail to enable each to reach an informed decision in respect of such proposed change or changes. Each of **TCN** and **York Factory** shall have sixty (60) days from the date it receives such notice to deliver a **Deficiency Notice** to the **Limited Partnership**, and if either fails to do so within such sixty (60) day period, it shall be deemed to have accepted such proposed change or changes to a **Closing Licence** and the **Limited Partnership** thereafter may proceed to seek such change or changes from the applicable **Regulatory Authority**.

Dispute Resolution

3.2.5 If, pursuant to subsections 3.2.2, or 3.2.4, the **Limited Partnership** and **TCN** or **York Factory**, as applicable, are unable to agree on whether the terms and conditions of a **Closing Licence**, or, if applicable, any amendment to a **Closing Licence** not requested by the **Limited Partnership**, if implemented or complied with, would result in a change to the applicable **Fundamental Feature**, or whether any proposed change or changes to a **Closing Licence** requested by the **Limited Partnership**, if implemented or complied with, would result in a change to the applicable **Fundamental Feature**, the matter may be referred, by either **TCN** or **York Factory**, as applicable, or by the **Limited Partnership**, to dispute resolution under Article 19 of this **JKDA**, to determine whether, on the balance of probabilities, such terms and conditions, or such change or changes, as the case may be, would be reasonably likely to result in a change to the applicable **Fundamental Feature**, and any decision made by the **Arbitrator** in any such dispute resolution shall be binding on the **Parties**, the **Limited Partnership** and each **KCN Investment Entity**.

Limitation on Arbitrator

3.2.6 For the purposes of an arbitration brought pursuant to subsection 3.2.5, notwithstanding any provision in Article 19 to the contrary, the **Arbitrator** shall have no jurisdiction to determine the terms and conditions of any **Closing Licence** or, if applicable, any amendment to a **Closing Licence** not requested by the **Limited Partnership**, or any proposed change or changes to a **Closing Licence** requested by the **Limited Partnership**. If the **Arbitrator's** decision in such a dispute is that, on the balance of probabilities, the terms and conditions of a **Closing Licence**, or, if applicable, any amendment to a **Closing Licence** not requested by the **Limited Partnership**, or the proposed change or changes to a **Closing Licence** requested by the **Limited Partnership**, if implemented or complied with, would be reasonably likely to result in a change to the applicable **Fundamental Feature**, then the **Limited Partnership** shall not accept, or act or rely upon, such **Closing Licence**, or shall not proceed with such any such amendment or proposed change or changes, as the case may be.

Extension or Renewal of a Closing Licence

3.2.7 Notwithstanding subsections 3.2.2, 3.2.3 and 3.2.4, the **Limited Partnership** at any time or from time to time, but without further extending the period specified in subsection 21.1.1 of this **JKDA**, may seek and obtain an amendment or amendments to any **Closing Licence** so as to extend any time period for the start of construction or the achievement of any milestones as may be specified in any such **Closing Licence**, or to renew any **Closing Licence**.

Undertaking Regarding the CRD Licence

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

ARTICLE 4

THE LIMITED PARTNERSHIP AND THE GENERAL PARTNER

4.1 ESTABLISHING THE LIMITED PARTNERSHIP

LP Agreement

4.1.1 The **Parties** will cause the **LP Agreement** to be entered into between the **General Partner**, the **KCN Investment Entities** and **Hydro** on the **Subscription Date**.

Limited Partnership Units

4.1.2 The **Limited Partnership** will be authorized to issue an unlimited number of **Class M, Class K and Class E Units**, with the rights, privileges, restrictions and conditions set out in the **LP Agreement** and summarized as follows:

- (a) **Class M Units** can only be issued by the **Limited Partnership** to **Hydro** and the **General Partner**; and holders of **Class M Units** have the right to receive notices of meetings of **Partners**, have the right to receive distributions out of **Distributable Cash**, and have the obligation to fund **Cash Calls**;
- (b) **Class K Units** are known as either **Class K Common Units** or **Class K Preferred Units** and can only be issued by the **Limited Partnership**:
 - (i) as **Class K Common Units**; and
 - (ii) to a **KCN Investment Entity**;
- (c) holders of **Class K Common Units** have the right to receive notices of meetings of **Partners**, have the right to receive distributions out of **Distributable Cash** and have the obligation to fund **Cash Calls**. Holders of **Class K Common Units**, also have the right to elect once, by delivering a **Preferential Distribution Notice** not less than sixty (60) days prior to the **Final Closing Date**, to receive preferential distributions on such units on and after the **Final Closing Date**, which terminates the obligation of such holders to fund **Cash Calls**, and thereafter such holders are considered to hold **Class K Preferred Units**;
- (d) **Class E Units** are known as either **Class E Inactivated Units** or **Class E Activated Units** and can only be issued by the **Limited Partnership**:
 - (i) as **Class E Inactivated Units**; and

- (ii) to a **KCN Investment Entity**;
- (e) holders of **Class E Inactivated Units** have no rights or obligations except for the right, on the **Initial Closing Date**, and, to the extent that not all **Class E Inactivated Units** are activated on the **Initial Closing Date**, on the tenth anniversary of the **Final Closing Date** and every fifth **Anniversary Date** thereafter, by delivering an **Election Notice** specifying the number of **Class E Inactivated Units** it wishes to activate in accordance with the **LP Agreement**, to activate that number of **Class E Inactivated Units** so specified; and, upon payment of the required **Election Payment**, those **Units** thereafter will be known as **Class E Activated Units**. Thereafter, the holder will be entitled in respect of such **Class E Activated Units**, to rights and obligations the same as **Class K Common Units**, including the right to receive distributions out of **Distributable Cash** and the obligation to fund **Cash Calls**, all as provided in the **LP Agreement**.

Subscriptions

4.1.3 Concurrently with the execution of the **LP Agreement** on the **Subscription Date**, each **Party** will, or will cause its **KCN Investment Entity** as set out below, to nominally capitalize and become a partner in the **Limited Partnership** by executing and delivering its **Subscription Agreement** and paying for **Units**, as follows:

<u>Partner</u>	<u>Unit Number and Type</u>	<u>Percentage</u>	<u>Subscription Price</u>
Hydro	7,499 Class M Units	74.99%	\$8,249
General Partner	1 Class M Unit	.01%	\$1
CNPLP	1,050 Class K Units	10.50%	\$1,050
CNPLP	450 Class E Units	4.50%	-
FLCNKII	350 Class K Units	3.50%	\$350
FLCNKII	150 Class E Units	1.50%	-
YFFNLP	350 Class K Units	3.50%	\$350
YFFNLP	<u>150 Class E Units</u>	<u>1.50%</u>	<u>-</u>
TOTALS	10,000 Class M, K or E Units	100.00%	\$10,000

Representations and Warranties

4.1.4 All of the representations and warranties of **Hydro** contained in subsection 15.1.1, and of each **Keeyask Cree Nation** contained in subsection 15.1.2, of this **JKDA** shall be true

and correct in all material respects at the **Subscription Date** with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate dated the **Subscription Date**, of the President of **Hydro** to that effect shall have been delivered to each **Keeyask Cree Nation**, and a certificate dated the **Subscription Date**, of each **Chief and Council** to that effect will have been delivered to **Hydro**, with copies to the other **Keeyask Cree Nations**.

4.2 PARTNER DECISION-MAKING

Voting Rights

4.2.1 As long as a **Partner** holds at least one **Class M, Class K or Class E Activated Unit**, it will be entitled to vote at any meeting of **Partners** held in accordance with the **LP Agreement**, or with respect to any decision required of **Partners** in accordance with the **LP Agreement**, as follows:

- (a) **Hydro** will be entitled to seventy-four (74) votes;
- (b) the **General Partner** will be entitled to one (1) vote;
- (c) **CNPLP** will be entitled to fifteen (15) votes;
- (d) **YFFNLP** will be entitled to five (5) votes; and
- (e) **FLCNKII** will be entitled to five (5) votes.

No Voting Rights; Rights Not Transferable

4.2.2 A **KCN Investment Entity** which ceases to hold at least one **Class K or Class E Activated Unit** will no longer be entitled to any votes. Voting rights are not transferable.

4.3 ACTIVITIES BEFORE INITIAL CLOSING

Limitation on Activities

4.3.1 The **Parties** agree that notwithstanding anything contained in this **JKDA** or in the **Limited Partnership Agreement** to the contrary, unless otherwise agreed to by **Hydro** and the **Keeyask Cree Nations**, acting by a **KCN Majority**:

- (a) subject to clause (b), below, the **Limited Partnership** shall not commence carrying on the **Business** until the completion of the **Initial Closing** on the **Initial Closing Date**;

- (b) from the **Subscription Date** to the **Initial Closing Date**, the only activity of the **Limited Partnership** will be to undertake, in accordance with the **Environmental Protocol**, such activities as may be necessary or desirable to cause the **Closing Licences** to be issued in the name of the **Limited Partnership**, as described in section 3.1 of this **JKDA**; and
- (c) subject to any express provision in this **JKDA** to the contrary, until the **Initial Closing Date**, **Hydro** will continue to design and plan for the development of the **Keeyask Project** in accordance with this **JKDA**.

Public Presence

4.3.2 For the purposes of and to facilitate the activities described in clause 4.3.1 (b), **Hydro**, in consultation with the **Keeyask Cree Nations**, agrees to establish a visual identity for the **Limited Partnership** consisting of a word mark and logo and agrees to establish, in advance of the filing of the **EIS** with **Regulatory Authorities**, a web site for the **Limited Partnership**. The costs of such activities will become part of the **Pre-Closing Liabilities**.

4.4 INITIAL CLOSING TRANSACTION

Initial Closing

4.4.1 At the **Initial Closing**, subject to subsection 4.4.3, the following transaction steps will occur, and will be deemed to occur in the following order, and none of the following steps will be deemed to occur unless all of the **Initial Closing Conditions** set forth in section 16.1 shall have been satisfied or waived:

- (a) each **KCN Investment Entity** shall invest in the **Limited Partnership** its **Initial Closing Cash**, in **Permitted Funds**;
- (b) the **Limited Partnership** and **Hydro** shall enter into the **Project Financing Agreement**;
- (c) each **KCN Investment Entity** shall enter into its **KCN Financing Agreement** with **Hydro**;
- (d) **Hydro** and the **Limited Partnership** shall enter into an assignment and transfer to the **Limited Partnership** of the **Pre-Closing Assets** and the assumption and taking on by the **Limited Partnership** of the **Pre-Closing Liabilities**;
- (e) **Hydro** and the **Limited Partnership** shall enter into agreements for the assumption and taking on by the **Limited Partnership** of **Hydro's** obligations under each **KCN Adverse Effects Agreement**;

- (f) the **Limited Partnership** and **Hydro** shall enter into:
 - (i) the **Construction Agreement**;
 - (ii) the **PPA**; and
 - (iii) an assignment and transfer by **Hydro** (Power Supply Business Unit) to the **Limited Partnership** of **Hydro's** rights and the assumption and taking on by the **Limited Partnership** of **Hydro's** obligations under the **Interconnection and Operating Agreement**.

Place and Time of Initial Closing

4.4.2 The **Initial Closing** shall take place at 10:00 a.m. **CST** on the **Initial Closing Date** at the offices of Thompson Dorfman Sweatman LLP, counsel for **Hydro**, at 2200-201 Portage Avenue, Winnipeg, Manitoba, or at such other place and time as the **Parties** may agree.

Remedy for Non-Performance of Conditions in Favour of Hydro

4.4.3 Notwithstanding subsection 4.4.1, if any of the conditions:

- (a) contained in clauses 16.1.1 (f), (g), (h) and (i) have not been fully performed or fulfilled at or prior to the **Initial Closing Date** to the satisfaction of **Hydro**, acting reasonably, or waived by **Hydro** in whole or in part, then the obligation of **Hydro** to close the **Initial Closing Transaction** shall terminate;
- (b) contained in subsection 16.1.1 other than clauses (f), (g), (h) and (i), are not true or have not been fully performed or fulfilled at or prior to the **Initial Closing Date** to the satisfaction of **Hydro**, acting reasonably, or waived by **Hydro** in whole or in part, then the right of each such **Non-Performing Keeyask Cree Nation** and its **KCN Investment Entity** to close the **Initial Closing Transaction** and invest in the **Limited Partnership** shall terminate, but **Hydro** nonetheless shall close the **Initial Closing Transaction** with each **Keeyask Cree Nation** and its **KCN Investment Entity** who fully performed and satisfied such conditions or in respect of which the unperformed or unsatisfied conditions have been satisfied or waived by **Hydro**.

Remedy for Non-Performance of Conditions in favour of the Keeyask Cree Nations

4.4.4 Notwithstanding subsection 4.4.1, if any of the conditions contained in subsection 16.1.2 shall not be performed, or fulfilled, or waived in whole or in part, at or prior to the **Initial Closing Date**, to the satisfaction of the **Keeyask Cree Nations**, acting by a **KCN Majority**, acting reasonably, then, subject to subsection 4.4.5 and the provisions of Article 21, the **Keeyask Cree Nations**, acting by a **KCN Majority**, may terminate their obligations

pursuant to this **JKDA**, provided that the **Keeyask Cree Nations**, acting by a **KCN Majority**, may also bring an action against **Hydro** for damages suffered by the **Keeyask Cree Nations** where the non-performance or non-fulfillment is as a result of a breach of a covenant, or the incorrectness of a representation or warranty of **Hydro**, other than a representation or warranty under clause 15.1.1 (f), provided that that representation and warranty was true as at the **Date of this JKDA**.

Initial Closing Purchase Right

4.4.5 **Hydro** shall purchase all of the **Units** owned by:

- (a) the **KCN Investment Entity** of each **Non-Performing Keeyask Cree Nation**; or,
- (b) each **KCN Investment Entity**, in the event the **Keeyask Cree Nations**, acting by a **KCN Majority**, terminate their obligations under this **JKDA** pursuant to subsection 4.4.4;

and each such **KCN Investment Entity** shall sell all of its **Units** to **Hydro** free and clear of all liens, charges and encumbrances, at a price equal to the **Nominal Subscription Cash**, without interest, on the terms and conditions set out in section 4.5.

4.5 TERMS OF INITIAL CLOSING PURCHASE RIGHT

Closing Date

4.5.1 The closing of a purchase and sale of all **Units** owned by a **KCN Investment Entity** pursuant to the **Initial Closing Purchase Right** shall occur on the first **Business Day** following the **Initial Closing**, or such earlier or later date as the parties to such purchase and sale may agree.

Price

4.5.2 The price for the purchase and sale of **Units** pursuant to the **Initial Closing Purchase Right** shall be equal to the **Nominal Subscription Cash**, which amount shall be paid by **Hydro** by cheque payable to the **KCN Investment Entity** on the closing date provided in subsection 4.5.1.

Closing Arrangements

4.5.3 Subject to **Hydro** paying the price as provided in subsection 4.5.2, the **KCN Investment Entity** shall deliver to **Hydro** on the closing date provided in subsection 4.5.1:

- (a) the **Unit** certificate(s) for all of its **Units** and a power of attorney appointing **Hydro** as attorney of such party to transfer all of its **Units** to **Hydro**;
- (b) such other documents as **Hydro** reasonably may require to cause the **General Partner** to register the transfer of all of its **Units** to **Hydro** and to entitle **Hydro** to become the registered holder thereof, free and clear of all liens, charges and encumbrances;
- (c) a certificate bearing the date on which the sale occurs wherein the **KCN Investment Entity** certifies:
 - (i) that it is the registered owner and sole beneficial owner of, and has good and marketable title to, and is lawfully possessed of all of its **Units** free and clear of all liens, charges and encumbrances other than those granted to **Hydro**;
 - (ii) that it has the full right and authority to sell and transfer all of its **Units** to **Hydro**;
 - (iii) that no person has any written or oral option, understanding or commitment, or any right or privilege capable of becoming any agreement, option, understanding, commitment or right for the purchase from it any of such **Units** other than **Hydro**; and
 - (iv) that it is resident in Canada for the purposes of the *Income Tax Act* (Canada).

4.6 FINAL CLOSING TRANSACTION

Final Closing Process

4.6.1 On the **Final Closing Date**, the following steps shall occur:

- (a) each **KCN Investment Entity** shall deliver a certificate, in form and substance satisfactory to the **Limited Partnership** and to **Hydro**, acting reasonably, dated the **Final Closing Date**, certifying that all of the representations and warranties contained in paragraph 4 of its **Subscription Agreement** are true and correct in all material respects at the **Final Closing Date**, with the same force and effect as if made at and as of such time;
- (b) each **KCN Investment Entity** shall pay its **Final Closing Cash** to **Hydro**;
- (c) the **Limited Partnership** will make the **Final Closing Preferred Unit Adjustments**; and

- (d) the **Limited Partnership** will make the **Final Closing Common Unit Adjustments**;

provided that, the obligation of the **Limited Partnership** to perform the steps specified in clauses (c) and (d), above, in respect of a **KCN Investment Entity** are subject to and contingent upon such **KCN Investment Entity** fully performing the steps specified in clauses (a) and (b), above.

Place and Time of Final Closing

4.6.2 The **Final Closing** shall take place at 10:00 a.m. **CST** on the **Final Closing Date** at the offices of Thompson Dorfman Sweatman LLP, counsel for **Hydro**, at 2200-201 Portage Avenue, Winnipeg, Manitoba, or at such other place and time as the **Parties** may agree.

Final Closing Sale Right

4.6.3 If a **KCN Investment Entity** elects not to pay its **Final Closing Cash** to **Hydro** on the **Final Closing Date** as provided in subsection 4.6.1, then it has the right to sell all of its **Units** to **Hydro** at a price equal to the total obligations, including accrued interest, then outstanding under its **KCN Financing Agreement**, which amount will be used to repay such obligations in full, plus an amount equal to the total of its **Nominal Subscription Cash** and its **Initial Closing Cash**, without interest, which amount will be paid to the **KCN Investment Entity**, on the terms and conditions provided in the **KCN Financing Agreement**.

Final Closing Purchase Right

4.6.4 If a **KCN Investment Entity** elects not to pay or does not pay its **Final Closing Cash** to **Hydro** on the **Final Closing Date** as provided in subsection 4.6.1, and does not exercise its right to sell all of its **Units** to **Hydro** as provided in subsection 4.6.3, then **Hydro** has the right to purchase all of the **KCN Investment Entity's Units** at a price equal to the total obligations, including accrued interest, then outstanding under its **KCN Financing Agreement**, which amount will be used to repay such obligations in full, plus an amount equal to the total of its **Nominal Subscription Cash** and its **Initial Closing Cash**, without interest, which amount will be paid to the **KCN Investment Entity**, on the terms and conditions provided in the **KCN Financing Agreement**.

4.7 COMMITTEES OF THE LIMITED PARTNERSHIP

Advisory Committees

4.7.1 **Hydro** will cause the **General Partner** to establish on or before the **Initial Closing Date**, a **Construction Advisory Committee** and a **Monitoring Advisory Committee**, with terms of reference as set forth in Schedules 4-6 and 4-7 hereto, respectively. **Hydro** shall cause the **General Partner** not to allow amendment of the **CAC Terms of Reference** or the **MAC Terms of Reference** without the prior written consent of the **Keeyask Cree Nations**,

acting by a **KCN Majority**, which consent may not be withheld unreasonably, provided that **Hydro** shall cause the **General Partner** to ensure that no change will be made to such terms of reference that would alter the proportionate representation of either **York Factory** or **Fox Lake** on such committees without the prior written consent of **York Factory** or **Fox Lake**.

4.8 THE GENERAL PARTNER

Restriction on Business Activity

4.8.1 **Hydro**, as the sole shareholder of the **General Partner**, agrees that it will cause the **General Partner** not to carry on any business activity unrelated to the **Keeyask Project**.

Board of Directors

4.8.2 Commencing on the **Initial Closing Date**, and for so long thereafter as a **Keeyask Cree Nation** through its **KCN Investment Entity** owns **Units**, such **Keeyask Cree Nation** shall be entitled to have **Hydro** appoint, and to replace as directed by the **Keeyask Cree Nation**, and **Hydro** agrees to appoint, and to replace as directed by the **Keeyask Cree Nation**, to the board of directors of the **General Partner** from time to time, in respect of **TCN**, two (2) **Qualified Nominees**, and in respect of each of **War Lake**, **York Factory** and **Fox Lake**, one (1) **Qualified Nominee**, all of whom shall serve at the pleasure of the respective **Chief and Council**. If a **KCN Investment Entity** does not own **Units**, the applicable **Keeyask Cree Nation** shall have no right to have **Qualified Nominees** appointed or replaced to the board of directors of the **General Partner**.

Names of Qualified Nominees to Hydro

4.8.3 Each **Keeyask Cree Nation** will provide **Hydro** on the **Initial Closing Date**, and as required from time to time after the **Initial Closing Date**, the names of its **Qualified Nominees**, together with a statutory declaration signed by the **Keeyask Cree Nation** declaring that each individual is a **Qualified Nominee**.

Non-Impairment

4.8.4 If for any reason, other than the failure of **Hydro** to appoint a **Keeyask Cree Nation's Qualified Nominee**, the number of **Qualified Nominees** appointed to the board of directors of the **General Partner** at any time is less than the number to which it is entitled as set forth in subsection 4.8.2, that shall not prohibit, prevent or impair in any way the ability of the board of directors of the **General Partner** from conducting its business at properly called meetings as the board may deem appropriate from time to time and shall not invalidate or render defective in any way any business conducted at any such meeting.

Meetings of the Board of Directors

4.8.5 For so long as a **Keeyask Cree Nation** has **Qualified Nominees** on the board of directors of the **General Partner**, **Hydro** agrees to cause meetings of the board of directors of the **General Partner** to be called at least quarterly during the **Construction Period** and at least twice every year at all other times, unless each **Keeyask Cree Nation** having **Qualified Nominees** on the board of directors and **Hydro** otherwise agree.

Hydro Right to Revoke Appointments

4.8.6 If a **Keeyask Cree Nation** is no longer entitled to appoint **Qualified Nominee(s)** to the board of directors of the **General Partner** because its **KCN Investment Entity** no longer holds **Units**, then notwithstanding anything contained in this section 4.8, **Hydro** shall have the right to revoke the appointment of such **Keeyask Cree Nation's Qualified Nominee(s)**.

ARTICLE 5

FINANCING THE LIMITED PARTNERSHIP

5.1 DEBT AND EQUITY

Debt and Equity

5.1.1 Twenty-five per cent (25%) of the **Capital Requirements** will be funded by equity investments from the **Limited Partners** and seventy-five (75%) per cent will be funded by debt financing to be provided to the **Limited Partnership** by **Hydro** pursuant to the **Project Financing Agreement**, but the debt portion will be allowed to rise to eighty-five (85%) per cent of the **Capital Requirements** during the **Initial Operating Period**, as described in the **Limited Partnership Agreement** and in the **Project Financing Agreement**.

Debt Financing

5.1.2 Subject to subsection 5.1.1, all debt financing required to fund the **Capital Requirements** of the **Limited Partnership** will be loaned to the **Limited Partnership** by **Hydro** from the **Initial Closing Date** to the **Maturity Date** pursuant to the **Project Financing Agreement**.

Equity Financing

5.1.3 Subject to subsection 5.1.1, **Hydro** shall cause the **General Partner** to ensure that all equity financing required to fund the **Capital Requirements** will be invested in the **Limited Partnership** by the **Partners**, including, in the case of the **KCN Investment Entities**, by way of the **Nominal Subscription Cash**, the **Initial Closing Cash** and the **Final Closing Cash**, and by making additional capital contributions to the **Limited Partnership** from time to time pursuant to **Cash Calls**, subject to and in accordance with the terms of this **JKDA** and the **Limited Partnership Agreement**.

Conflicts

5.1.4 In the event of any discrepancies between the provisions of the **Project Financing Agreement** and the provisions of this Article, the provisions of the **Project Financing Agreement** shall prevail, and in the event of any discrepancies between the provisions of the **KCN Financing Agreements** and the provisions of this article, the provisions of the **KCN Financing Agreements** shall prevail. For greater certainty, the fact that one or more of the **JKDA**, the **Project Financing Agreement** or the **KCN Financing Agreements** is silent on a matter referred to in one or more of the other agreements, is not, and shall not be considered to be a discrepancy.

5.2 DEBT FINANCING

Project Financing Agreement Credit Facilities

5.2.1 Pursuant to the terms of the **Project Financing Agreement**, commencing on the **Initial Closing Date**, Hydro will provide the **Limited Partnership** with the following:

- (a) a **Non-Revolving Credit Facility** in an amount not more than eighty-five (85%) per cent of the **Capital Requirements** during the **Initial Operating Period**, and seventy-five (75%) per cent before and after such period, in either case less the amount outstanding under the **Revolving Credit Facility**, to be used to fund **Capital Requirements**, on terms and conditions described in the **Project Financing Agreement**;
- (b) a **Revolving Credit Facility** in the amount of one hundred and fifty million (\$150,000,000) dollars to be used to fund **Capital Requirements**, on terms and conditions described in the **Project Financing Agreement**; and
- (c) an **Interconnection Credit Facility** to fund obligations for capital construction costs due from the **Limited Partnership** to **Hydro** under the **Interconnection and Operating Agreement**, on terms and conditions described in the **Project Financing Agreement**.

Security for Debt Financing

5.2.2 All of the obligations of the **Limited Partnership** under the **Project Financing Agreement** will be secured by a first fixed and floating charge on all of its assets in favour of **Hydro**, on the terms and conditions set out in the **Project Financing Agreement**.

5.3 EQUITY FINANCING AND LOANS TO THE KCN INVESTMENT ENTITIES

KCN Financing Agreements

5.3.1 On the **Initial Closing Date**, each **KCN Investment Entity** will enter into its **KCN Financing Agreement** with **Hydro**, whereby **Hydro** agrees to provide the **KCN Investment Entity** with a **Construction Credit Facility**, an **Operating Credit Facility** and a **Common Unit Distribution Credit Facility**, all on the terms and conditions provided in such **KCN Financing Agreement**.

Additional Capital Contributions

5.3.2 On and after the **Initial Closing Date**, subject to subsection 5.1.1, the **General Partner** will be entitled to make **Cash Calls** from time to time on **Partners** as the **General**

Partner determines necessary for the operation of the **Business**, as provided in the **LP Agreement**.

Initial Closing Cash

5.3.3 On the **Initial Closing Date**, each **KCN Investment Entity** will invest its **Initial Closing Cash**, in **Permitted Funds**, in the **Limited Partnership**.

Funding Cash Calls from the Initial Closing Date to the Final Closing Date

5.3.4 Subject to the closing of the **Initial Closing Transaction** as provided in section 4.4, **Cash Calls** on a **KCN Investment Entity's Class K Common Units** effective on and after the **Initial Closing Date**, up to and including the **Final Closing Date**, will be funded by advances under its **Construction Credit Facility** pursuant to its **KCN Financing Agreement**.

Payment of its Final Closing Cash

5.3.5 On the **Final Closing Date**, each **KCN Investment Entity** will repay a portion of its **Construction Credit Facility** by paying its **Final Closing Cash** to **Hydro**, in accordance with the provisions of its **KCN Financing Agreement**.

Preferential Distribution Notice

5.3.6 Each **KCN Investment Entity** electing to have its **Class K Common Units** treated as **Class K Preferred Units** on and after the **Final Closing Date** shall deliver a **Preferential Distribution Notice** at least sixty (60) days prior to the **Final Closing Date**.

Final Closing Preferred Unit Adjustments

5.3.7 Provided the **Final Closing Transaction** closes as provided in section 4.6 of this **JKDA**, as part of the **Final Closing** on the **Final Closing Date**, each holder of **Class K Preferred Units** will:

- (a) have its capital account on the books of the **Limited Partnership** credited by the **General Partner** with the amount of such holder's **Final Closing Preferred Credit**;
- (b) irrevocably direct the **General Partner** to transfer the balance of its capital account on the books of the **Limited Partnership**, except for the amount of its **Own Cash Invested** and **Final Closing Preferred Credit**, to the capital account of **Hydro**;

- (c) irrevocably assign and transfer to **Hydro**, free and clear of all encumbrances, that number of its **Class K Preferred Units**, which thereafter will be deemed to be **Class K Common Units**, determined based on the **Preferred Unit Adjustment Formula**, for the aggregate sum of one (\$1.00) dollar, as provided in its **KCN Financing Agreement**;
- (d) have the balance outstanding on its **Construction Credit Facility** forgiven by **Hydro**, and its **Construction Credit Facility** and its **Operating Credit Facility** cancelled, by **Hydro**; and
- (e) have the balance then outstanding under its **Common Unit Distribution Credit Facility**, with no further interest accruing thereon after such date, repaid in the manner provided in its **KCN Financing Agreement**, and its **Common Unit Distribution Credit Facility**, in respect of any future advances, cancelled by **Hydro**.

Final Closing Common Unit Adjustments

5.3.8 Provided the **Final Closing Transaction** closes as provided in section 4.6 of this **JKDA**, as part of the **Final Closing** on the **Final Closing Date**, each holder of **Class K Common Units** which has invested **Own Cash Invested** in an amount less than its **Proportionate Share** of twenty-five million (\$25,000,000) dollars, will:

- (a) irrevocably assign and transfer to **Hydro**, free and clear of all encumbrances, that number of its **Class K Common Units**, determined based on the **Common Unit Loan Adjustment Formula**, for the aggregate sum of one (\$1.00) dollar, as provided in its **KCN Financing Agreement**; and
- (b) have a portion of the balance outstanding on its **Construction Credit Facility**, proportionate to the number of **Units** transferred to **Hydro** as provided in (a), above, determined in accordance with the **Common Unit Loan Adjustment Formula**, forgiven by **Hydro**, with the balance then remaining being repaid in the manner provided in its **KCN Financing Agreement**.

Minimum Cash Investment

5.3.9 On and after the **Final Closing Date**, each **KCN Investment Entity** shall have invested in the **Limited Partnership**, directly, and through the payment of its **Final Closing Cash** to **Hydro**, its **Minimum Cash Investment**.

Funding Cash Calls Following the Final Closing Date

5.3.10 **Cash Calls** effective after the **Final Closing Date** on a **KCN Investment Entity's Class K Common Units**, will be funded by advances under the **KCN Investment Entity's Operating Credit Facility**.

Credit Facilities Not Available

5.3.11 The **Credit Facilities** under a **KCN Financing Agreement** will not be available to fund a **KCN Investment Entity's Cash Payments**.

Distributions on Class K Common Units and Common Unit Distribution Loans

5.3.12 Each holder of **Class K Common Units** will be entitled to receive annually, the larger of:

- (a) distributions out of **Distributable Cash**, if and when declared by the **General Partner**, after distributions to the holders of **Class K Preferred Units** and on a pro rata basis with the holders of **Class M** and **Class E Activated Units**, in accordance with the **LP Agreement**; and
- (b) until the **Maturity Date**, a **Common Unit Distribution Loan** under the **Common Unit Distribution Credit Facility**, in accordance with its **KCN Financing Agreement**.

Distributions on Class K Preferred Units

5.3.13 Holders of **Class K Preferred Units** will be entitled to receive annually, whether or not any **Distributable Cash** is determined to exist, in priority to distributions to the holders of **Class M**, **Class K Common** or **Class E Activated Units**, the larger of:

- (a) the **Preferred Minimum Distribution**; and
- (b) the **Preferred Participating Distribution**, but only to the extent there are **Adjusted Gross Revenues** in the year;

in accordance with the **LP Agreement**.

Interest on the Construction Credit Facility

5.3.14 All advances under the **Construction Credit Facility** up to and including the **Final Closing Date** will bear interest initially at the **Floating Rate**, plus two (2%) per cent, plus an annual charge equal to the **Guarantee Fee**, but will be converted on the **Final Closing Date** to the then current **Thirty Year Rate**, plus two (2%) per cent, plus an annual charge equal to the **Guarantee Fee**, to be in effect until the **Maturity Date**.

Interest on the Operating Credit Facility

5.3.15 All advances under the **Operating Credit Facility** will bear interest at the **Ten Year Rate**, plus two (2%) per cent, plus an annual charge equal to the **Guarantee Fee**, to be in

effect until the **Maturity Date**.

Interest on the Common Unit Distribution Credit Facility

5.3.16 All advances under the **Common Unit Distribution Credit Facility** up to and including the **Final Closing Date** will bear interest at the **Floating Rate**, plus two (2%) per cent, up to and including the **Final Closing Date**, but will be converted on the **Final Closing Date** to the then current **Thirty Year Rate**, plus two (2%) per cent, to be in effect until the **Maturity Date**. All advances under the **Common Unit Distribution Credit Facility** following the **Final Closing Date** will bear interest at the **Thirty Year Rate**, in effect at the date of advance, plus two (2%) per cent, to be in effect until the **Maturity Date**.

Repayment of the Credit Facilities

5.3.17 For so long as there are any amounts outstanding under any of the **Credit Facilities**:

- (a) from the first **Fiscal Year** ending following the **Final Closing Date** to the first **Fiscal Year** ending following the fifteenth **Anniversary Date**, seventy (70%) per cent of all distributions on **Class K Common Units** paid or payable to a **KCN Investment Entity** in respect of any such **Fiscal Year** will be used to repay the **Construction Credit Facility** and the **Operating Credit Facility**, with the remaining thirty (30%) per cent of such distributions being paid to the **KCN Investment Entity**, subject to such amount being used to repay amounts owing under the **Common Unit Distribution Credit Facility**;
- (b) from the first **Fiscal Year** ending following the fifteenth **Anniversary Date** to the first **Fiscal Year** ending following the **Maturity Date**, eighty (80%) per cent of all distributions on **Class K Common Units** paid or payable to a **KCN Investment Entity** in respect of any such **Fiscal Year** will be used to repay the **Construction Credit Facility** and the **Operating Credit Facility**, with the remaining twenty (20%) per cent of such distributions being paid to the **KCN Investment Entity**, subject to such amount being used to repay amounts owing under the **Common Unit Distribution Credit Facility**; and
- (c) the total amount outstanding, if any, under any of the **Credit Facilities**, plus interest, will be due in full on the **Maturity Date**.

KCN Financing Agreement Costs

5.3.18 Unless a default occurs under a **KCN Financing Agreement**, all of the costs and expenses of **Hydro** as lender under a **KCN Financing Agreement**, including all legal fees and expenses of **Hydro**, will not be paid by the **KCN Investment Entity**, but rather will be charged to and paid by the **Limited Partnership**. All of **Hydro's** costs and expenses following a default

by a **KCN Investment Entity** under its **KCN Financing Agreement** will be charged and paid in accordance with the provisions of the **KCN Financing Agreement**.

Loans Non-Recourse

5.3.19 Recourse to the obligation of each **KCN Investment Entity** to repay its **Credit Facilities** on the terms and conditions set out in its **KCN Financing Agreement** shall be limited to the security on its **Units** and all rights under its **Units**, including the right to receive distributions, in favour of **Hydro** as described in subsection 5.5.1, and there shall be no other recourse to the **KCN Investment Entity** or to the applicable **Keeyask Cree Nation** for unpaid amounts under, or for any breach of, its **KCN Financing Agreement**.

5.4 PERMITTED FUNDS

Payments in Permitted Funds

5.4.1 The **Keeyask Cree Nations** agree with **Hydro** that a **KCN Investment Entity's Cash Payments** to the **Limited Partnership** must be made using **Permitted Funds**, and the payment to **Hydro** of its **Final Closing Cash** must be made using funds that are allowed, in accordance with the applicable **KCN Financing Agreement**, to be used for such repayment.

Payment Certification

5.4.2 At least thirty (30) days prior to the time of making a **Cash Payment**, a **KCN Investment Entity** shall provide a **Payment Certification** to **Hydro**.

Hydro Review and Determination

5.4.3 **Hydro** shall:

- (a) have the right within five (5) calendar days of receipt of the **Payment Certification**, to request from a **KCN Investment Entity** such additional information and notarized copies of documents relating to the monies proposed to be used in respect of the payment as **Hydro** reasonably may require;
- (b) be entitled to receive such written consents and waivers from the **KCN Investment Entity** to obtain additional information and documents from any **Person** relating to the monies proposed to be used in respect of the payment as **Hydro** reasonably may require; and
- (c) confirm in writing, within twenty (20) calendar days of receipt of the **Payment Certification**, or within twenty (20) days of receipt of all additional information or documentation requested pursuant to clause (b) above, whether or not the

monies proposed to be used in respect of the payment constitute **Permitted Funds**.

If Monies Constitute Permitted Funds

5.4.4 If **Hydro** makes a determination that the monies proposed to be used in respect of the payment constitute **Permitted Funds**, then the **KCN Investment Entity** may proceed to make the payment, provided it also tenders a statutory declaration signed by a duly authorized officer certifying there has been no material change to any of the information or documents provided by the **KCN Investment Entity** pursuant to subsection 5.4.3.

If Monies Do Not Constitute Permitted Funds

5.4.5 If **Hydro** makes a determination that the monies proposed to be used in respect of the payment as provided in subsection 5.4.1, do not constitute **Permitted Funds**, then subject to the **KCN Investment Entity** bringing a **Claim** pursuant to Article 19 and the **Arbitrator** appointed pursuant thereto determining otherwise, the **KCN Investment Entity** shall not be entitled to make the payment with the proposed monies, and the requirements of this section 5.4 must again be complied with before a **KCN Investment Entity** proposes to make a **Cash Payment**. If an **Arbitrator** appointed as provided above makes a determination that the **KCN Investment Entity** should have been able to make the payment with the proposed monies, then such **KCN Investment Entity** shall be entitled to make the payment with the proposed monies as though it had been permitted to do so at the required time.

5.5 SECURITY FROM EACH KCN INVESTMENT ENTITY

Security in Favour of Hydro

5.5.1 All of the obligations of each **KCN Investment Entity** under its **KCN Financing Agreement** will be secured by a pledge of, and a first ranking security interest in, all of the **KCN Investment Entity's Units**, and an assignment of, and, subject to subsection 5.6.5, a first ranking security interest in, all rights under such **Units**, including rights to distributions on such **Units**, in favour of **Hydro**.

Prohibition against Other Security

5.5.2 A **KCN Investment Entity** will not be permitted to, and it will not, sell, transfer, assign, encumber, grant a security interest in, or pledge as collateral (except for an encumbrance, pledge or grant of security interest to **Hydro**) or dispose of in any way, directly or indirectly, its legal or beneficial interest in its **Units**, or in any rights or entitlements attaching to such **Units**, including the right to receive distributions, except as provided in subsection 5.5.3.

Exception

5.5.3 Subject to section 5.6, a **KCN Investment Entity** may grant a security interest in distributions on its **Units** as collateral to a **Permitted Party**, or to a bank, credit union, insurance company, pension fund or other financial institution in Canada in the business of lending money to commercial borrowers in Canada, or to such other lender as may be approved in writing by **Hydro** in the manner provided in section 5.6, where the sole purpose of the loan is to use the proceeds to fund an **Election Payment**.

5.6 HYDRO'S RIGHT OF FIRST REFUSAL

Notice to Hydro

5.6.1 If an **Electing Entity** desires to grant a security interest in distributions on its **Units** as collateral to a proposed lender to fund an **Election Payment** pursuant to an **Offer**, which the **Electing Entity** desires to accept, it shall deliver a certified true copy of the **Offer** to **Hydro** and, if the proposed lender is not a **Permitted Party**, or a bank, credit union, insurance company, pension fund or other financial institution in Canada in the business of lending money to commercial borrowers in Canada, the information with respect to the proposed lender specified in subsection 5.6.6.

Right of to Provide Financing

5.6.2 If the proposed lender is not a **Permitted Party**, **Hydro** shall have the right, at **Hydro's** option, for a period of thirty (30) days after receipt of the **Offer**, to notify the **Electing Entity** in writing that **Hydro** elects to provide the financing to the **Electing Entity** on the terms and conditions specified in the **Offer**, subject to subsection 5.6.6.

If Hydro Elects

5.6.3 If **Hydro** elects to provide the financing as provided in subsection 5.6.2, then the **Electing Entity** and **Hydro** shall in good faith work to complete the financing as nearly as possible on the terms and conditions specified in the **Offer**, except as the **Electing Entity** and **Hydro** may otherwise agree.

If Hydro Does Not Elect

5.6.4 If the **Electing Entity** does not receive an election from **Hydro** within the time and in the manner specified in subsection 5.6.2, then the **Electing Entity** shall be entitled, within a period of ninety (90) days after the last date on which **Hydro** could have elected, to place the financing with the proposed lender who made the **Offer**, but only on the terms and conditions specified in the **Offer**. If the financing with the proposed lender is not completed within the ninety (90) days, then any subsequent financing with any **Person** may be made only if the requirements of this section 5.6 are again complied with.

Subordination of Hydro Security

5.6.5 If the **Electing Entity**, after having complied with the provisions of this section 5.6, places the financing with the proposed lender who made the **Offer** on the terms and conditions specified in the **Offer**, **Hydro** will subordinate its security granted pursuant to the **KCN Financing Agreement** and pursuant to the **Revenue Advance Agreement**, if any, in distributions on **Class E Activated Units** in favour of security in such distributions to such lender specified in the **Offer**, subject to such lender entering into a form of subordination and priorities agreement with **Hydro** on commercially reasonable terms consistent with this section 5.6.

Information Regarding Lender

5.6.6 If the proposed lender is not a **Permitted Party**, or a bank, credit union, insurance company, pension fund or other financial institution in Canada in the business of lending money to commercial borrowers in Canada, then the **Electing Entity's** right to grant a security interest in distributions on its **Units** as provided in subsection 5.5.3 is subject to the prior written approval of **Hydro**, acting reasonably, of any such proposed lender. The **Electing Entity** shall provide **Hydro** in writing with the name, business address, directors, officers and shareholders of the proposed lender and a description of the nature of its business, including a history of its lending practices, together with such other information as the **Electing Entity** considers desirable so as to enable **Hydro** to make an informed decision.

Hydro's Approval

5.6.7 **Hydro** shall:

- (a) have the right within five (5) calendar days of receipt of the information and documentation described in subsection 5.6.6, to request from **Electing Entity** such additional information and notarized copies of documents relating to the proposed lender as **Hydro** reasonably may require; and
- (b) confirm in writing, within twenty (20) calendar days of receipt of the information and documentation described in subsection 5.6.6, or within twenty (20) days of receipt of all additional information or documentation requested pursuant to clause (a) above, whether or not **Hydro** approves the proposed lender.

ARTICLE 6
PROJECT DEVELOPMENT

6.1 DEVELOPMENT OF THE PROJECT

Support for the Keeyask Project

6.1.1 Each of **CNP, York Factory and Fox Lake** agrees with **Hydro** and will agree with the **Limited Partnership** and will cause its **KCN Investment Entity** to agree with **Hydro** and with the **Limited Partnership** that, for so long as this **JKDA** is in effect and **Hydro** is in compliance with its obligations under this **JKDA**, each of **CNP, York Factory and Fox Lake**, and each of their respective **KCN Investment Entities**, will:

- (a) provide reasonable and practical support for the **Keeyask Project**, subject to the proviso that providing reasonable and practical support is not intended to require it or its **KCN Investment Entity** to make any expenditures not required or contemplated by the terms of this **JKDA**, or by any agreement attached as a Schedule to this **JKDA**;
- (b) cooperate fully with the **Limited Partnership** in a timely and effective manner to make the **Keeyask Project** a successful and profitable development through all of its phases; and
- (c) assist the **Limited Partnership**, as required, in dealing with any concerns or issues regarding the **Keeyask Project** expressed by **Members, Regulatory Authorities**, or the public.

Consent to Hydro Services

6.1.2 Each **Keeyask Cree Nation**, on its own behalf and on behalf of its **KCN Investment Entity**, agrees to **Hydro** providing services to the **Limited Partnership** on the terms and conditions set out in or contemplated by this **JKDA**, or in any Schedule to this **JKDA**.

Limitation on Additional Services

6.1.3 Except for such services as are:

- (a) set out in or contemplated by this **JKDA**, or in any Schedule to this **JKDA**; or
- (b) approved by the board of directors of the **General Partner** and provided to the **Limited Partnership** at cost and without mark-up;

Hydro will neither provide, nor enter into any agreement to provide additional services to the **Limited Partnership** without the prior written consent of the **Keeyask Cree Nations**, acting by a **KCN Majority**, which consent may not be withheld unreasonably.

Waiver of Claims Based Solely on Conflicts of Interest

6.1.4 Each **Keeyask Cree Nation**, on its own behalf and on behalf of its **KCN Investment Entity**, acknowledges that there are potential conflicts of interest inherent in the structure the **Parties** have agreed upon for the development and operation of the **Keeyask Project**. Each **Keeyask Cree Nation** waives, and will cause its **KCN Investment Entity** to waive, any cause of action or right to object that it may otherwise have against the **Limited Partnership**, the **General Partner** or **Hydro** solely by reason of the existence of such conflicts of interest.

6.2 HYDRO GUARANTEE

Guarantee

6.2.1 Subject to the provisions of this section 6.2, **Hydro** hereby absolutely and irrevocably guarantees to each **KCN Investment Entity** and to the **Limited Partnership** the punctual and complete fulfillment, payment and performance when due of all of the duties and obligations of the **General Partner** under the **LP Agreement**, including the **General Partner's** obligations, on behalf of the **Limited Partnership**:

- (a) to ensure compliance by **Hydro** with all of the terms of the **Hydro Agreements**; and
- (b) to ensure compliance by **Hydro** with all of the terms of Article 9 of this **JKDA**.

Proviso

6.2.2 A claim under the **Hydro Guarantee** may not be brought if the matters giving rise to the claim would otherwise be subject to a review by an **Expert** under Article 18 of this **JKDA**, in which event a claim under the applicable **Expert Review Mechanism** shall be the only remedy available to a **Keeyask Cree Nation**.

Condition

6.2.3 A claim under the **Hydro Guarantee** may only be brought if a **KCN Majority** has consented in writing to the claim, and all decisions related to the administration and any settlement of a claim under the **Hydro Guarantee** shall be determined by **KCN Majority**.

Costs

6.2.4 If a **KCN Majority** has consented to a claim, then each **KCN Investment Entity** shall pay its **Proportionate Share** of the costs of making, administering and settling the claim, and shall participate, based on its **Proportionate Share**, in any award by an **Arbitrator** as to costs. However, any **KCN Investment Entity** may elect in writing, within fifteen (15) days of being advised of the potential claim by the **KCN Majority**, not to participate in the claim. Such non-participating **KCN Investment Entity** shall not be a party to the claim, will not be required to fund any of the costs related to the claim, and will not thereafter be entitled to bring another claim under the **Hydro Guarantee** on substantially the same grounds provided in the claim commenced by the **KCN Majority**. To the extent that any claim is successful and an **Arbitrator** makes an award based on the claim in favour of the **Limited Partnership**, the **Arbitrator** may make an award as to costs that takes into consideration the fact that such non-participating **KCN Investment Entity** did not fund any of the costs related to the claim, even though it may be entitled, indirectly, to a share of the benefits of the claim through such award in favour of the **Limited Partnership**.

Burden of Proof

6.2.5 Without limiting the scope of the **Hydro Guarantee**, subject to subsection 6.1.4 and 6.2.6, those **KCN Investment Entities** participating in a claim shall be entitled to seek recovery on behalf of the **Limited Partnership** under the **Hydro Guarantee**, without having to establish that the **General Partner** breached any standard of care or specific covenant in the **LP Agreement**, such that failure by **Hydro** to comply with the terms of the **Hydro Agreements** or the terms of Article 9 of this **JKDA** shall entitle such **KCN Investment Entities** to seek recovery on behalf of the **Limited Partnership** under the **Hydro Guarantee**.

Defences

6.2.6 The liability of **Hydro** under the **Hydro Guarantee** shall be binding upon **Hydro** and its successors, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever (whether or not **Hydro** shall have any knowledge or notice thereof) which might otherwise constitute a legal or equitable discharge or defence of a guarantor; provided that any claim against **Hydro** under the **Hydro Guarantee** shall be subject to, and **Hydro** shall have available to it in defence of any such claim, any and all rights and defences, whether arising under this **JKDA**, the **Hydro Agreements**, or otherwise, in respect of such claim. To the extent of any payment by **Hydro** to the **Limited Partnership** under the **Hydro Guarantee**, **Hydro** shall succeed to all corresponding claims that the **Limited Partnership** or the **General Partner** may have and otherwise shall be subrogated to the corresponding rights of the **Limited Partnership** or the **General Partner**.

ARTICLE 7

DESCRIPTION OF KEEYASK PROJECT

7.1 PROJECT DESCRIPTION

Keeyask Project

7.1.1 The **Keeyask Project** involves the development of a six hundred and ninety-five (695) MW generating station, at rated capacity, on the Nelson River at the base of Gull Rapids, immediately upstream of Stephens Lake. The site is located on provincial Crown land, entirely within the **Split Lake Resource Management Area**, and, subject to receiving the consent of **Manitoba**, is intended to be acquired by the **Limited Partnership**.

Project Description

7.1.2 Subject to the provisions of this Article 7, the **Keeyask Project**, including the principal structures and the supporting infrastructure, as well as the anticipated water regime, will be substantially as set forth in the **Project Description**, attached hereto as Schedule 7-1.

Project Description Subject to Change

7.1.3 The **Project Description** set forth in Schedule 7-1 reflects the description of the **Keeyask Project** as it is known and understood, and as it is intended to be built, as at the **Date of this JKDA**. As the final design for the development of the **Keeyask Project** progresses and construction occurs, subject to subsection 7.1.5, the **Project Description** may be changed by the **Limited Partnership** as it considers necessary or desirable in order to accommodate engineering, economic and environmental criteria, as well as requirements of **Regulatory Authorities**.

Notice of Material Changes

7.1.4 The **Limited Partnership** will advise the **Keeyask Cree Nations** of any material changes to the **Project Description** made pursuant to subsection 7.1.3 and will use reasonable commercial efforts to do so in advance of such changes being made.

No Change to Fundamental Features

7.1.5 No change shall be made to the **Project Description** which would result in a change to any **Fundamental Feature** described in subsections 7.2.1 or 7.2.2 without the prior written consent of **TCN**, and no change shall be made to the **Project Description** which would result in a change to the **Fundamental Operating Feature** described in clause 7.2.2 (a) of this **JKDA** without the prior written consent of **York Factory**.

7.2 FUNDAMENTAL FEATURES

Fundamental Construction Features

7.2.1 The following features related to the construction of the **Keeyask Project** are of fundamental importance to **TCN**:

- (a) the north access road, linking Provincial Road 280 to the **Keeyask Generating Station**, will be routed within the corridor shown in Figure 1 of Schedule 7-1;
- (b) the south access road, linking the **Keeyask Generating Station** to the Butnau Dam and to Gillam, on the south side of the Nelson River, will be routed within the corridor shown in Figure 1 of Schedule 7-1;
- (c) the intake and powerhouse complex of the **Keeyask Generating Station** will be located in the north channel of Gull Rapids on the Nelson River and the spillway will be located within a channel excavated on an island within Gull Rapids, as shown in Figure 2 of Schedule 7-1;
- (d) the main construction camp for the **Keeyask Project** will be located on the north side of the Nelson River, generally in the area shown in Figure 3 of Schedule 7-1; and
- (e) no change to the **CRD Licence**, as modified by the **Augmented Flow Program**, or to the **LWR Licence**, will be required to construct the **Keeyask Project**.

Fundamental Operating Features

7.2.2 The following features related to the operation of the **Keeyask Project** set out in this subsection 7.2.2 are of fundamental importance to **TCN** and the feature set out in clause 7.2.2 (a) is of fundamental importance to **York Factory**:

- (a) the operation of the **Keeyask Generating Station** will not affect water levels on Split Lake during open water conditions;
- (b) the **FSL** of the forebay of the **Keeyask Generating Station** will be 159.0 metres (521.7 feet) and the **MOL** of the forebay will be 158.0 metres (518.4 feet), provided that the water level of the forebay may exceed the **FSL** or be drawn down below the **MOL** under special or emergency conditions, as described in subsection 7.2.3 of this **JKDA**; and
- (c) no change to the **CRD Licence**, as modified by the **Augmented Flow Program**, or to the **LWR Licence**, will be required to operate the **Keeyask Project**.

Special or Emergency Conditions

7.2.3 Notwithstanding the **Fundamental Operating Feature** set forth in clause 7.2.2 (b), special or emergency operating conditions may occur from time to time which may cause the water level in the forebay of the **Keeyask Generating Station** to exceed the **FSL** or be drawn down below the **MOL**. Special or emergency operating conditions are described in Schedule 7-1 and include electrical load rejection, flood management, meteorological events, imminent failure of a dam or downstream accidents.

Operation When the Forebay is Outside the Normal Operating Range

7.2.4 Variations from the normal operating range between the **FSL** and the **MOL** under special or emergency operating conditions in most cases will be 0.5 metres (1.6 feet), or less. At any time when the forebay water level is above 159.5 metres (523.3 feet), **Hydro** will take action to increase the combined discharges through the powerhouse and spillway to the maximum extent that safety or license considerations allow, without regard for economic considerations. At any time when the forebay water level is below 157.5 metres (516.7 feet), **Hydro** will take action to decrease the combined discharges through the powerhouse and spillway to the maximum extent safety or license considerations allow, without regard for economic considerations.

Compliance with Fundamental Features

7.2.5 **Hydro**, as **Project Manager**, agrees with **TCN** that the **Keeyask Project** will be constructed so as to comply with the **Fundamental Construction Features** and **Hydro**, as operator, agrees with **TCN** that the **Keeyask Project** will be operated so as to comply with the **Fundamental Operating Features**. **Hydro**, as operator, agrees with **York Factory** that the **Keeyask Project** will be operated so as to comply with the **Fundamental Operating Feature** described in clause 7.2.2 (a) of this **JKDA**.

ARTICLE 8

CONSTRUCTION OF THE PROJECT

8.1 COMMENCEMENT OF CONSTRUCTION

Substantial Construction Start within Six Years

8.1.1 Subject to subsections 8.1.4, 8.1.5 and 8.1.10, the **Limited Partnership** shall make a **Substantial Construction Start** within six (6) years of the date on which the last of the **Closing Licences** required for a **Construction Start** issued to the **Limited Partnership**, failing which, the rights and obligations of the **Parties** under this **JKDA** shall terminate as provided in Article 21.

Construction to Proceed Diligently

8.1.2 Once the **Limited Partnership** commences construction of the **Keeyask Project** it shall proceed diligently to complete construction, subject to the right of the **Limited Partnership** to halt construction, as provided in subsection 8.1.6, or to terminate this **JKDA**, as provided in clause 21.1.1 (c).

Construction Notice

8.1.3 **Hydro** shall deliver a **Construction Notice** to each **Keeyask Cree Nation** not more than one hundred and eighty (180) days and not less than forty-five (45) days prior to the date specified in the **Construction Notice** as the **Construction Start Date**.

Construction Conditions

8.1.4 The **Limited Partnership** shall not commence construction of the **Keeyask Project** unless:

- (a) those **Closing Licences** required for a **Construction Start** shall have been issued to the **Limited Partnership** and no **Deficiency Notice** shall have been delivered to the **Limited Partnership** in respect of any such **Closing Licences** which has not been resolved; and
- (b) there is no order or injunction entered in any action or proceeding in any court of competent jurisdiction or governmental authority having jurisdiction over the enforcement of the **Applicable Laws** making illegal or prohibiting the development of the **Keeyask Project**.

Further Condition

8.1.5 Notwithstanding subsection 8.1.4, if at the **Construction Start Date** a **KCN Majority** has not closed its investment in the **Limited Partnership** as provided in section 4.4 of this **JKDA**, and the reason that a **KCN Majority** has not closed its investment in the **Limited Partnership** is as a result of the non-performance or non-fulfillment of a condition to be performed or fulfilled by the **Limited Partnership** or by **Hydro**, then the **Limited Partnership** shall not commence construction of the **Keeyask Project**.

Construction Halt

8.1.6 If the **Limited Partnership** has made a **Substantial Construction Start**, but a material change of circumstances arises in that six (6) year period such that the **Limited Partnership** determines that it wishes to halt construction of the **Keeyask Project**, then as long as the pouring of concrete for the concrete structures comprising the principal structures of the **Keeyask Project** has not yet commenced, the **Limited Partnership**, on one occasion only, may halt construction of the **Keeyask Project** for a period not exceeding five (5) years.

Restart Notice

8.1.7 If within a period of five (5) years from the date construction was halted pursuant to section 8.1.6, the **Limited Partnership** wishes to restart construction of the **Keeyask Project**, the **Limited Partnership** shall deliver a **Restart Notice** to each **KCN Investment Entity** not more than one hundred and eighty (180) days and not less than thirty (30) days prior to the date specified in the **Restart Notice** for the restart of construction.

Restart of Construction

8.1.8 Subject to the terms of the **Closing Licences**, the **Limited Partnership** may restart construction of the **Keeyask Project** at any time within five (5) years of construction being halted pursuant to subsection 8.1.6. If the **Limited Partnership** does not restart construction within such five (5) year period, then this **JKDA** shall terminate, as provided in Article 21.

Suspension of Interest

8.1.9 **Hydro** agrees that commencing on the date construction is halted pursuant to subsection 8.1.6 and up to the date, if any, when construction is restarted pursuant to subsection 8.1.8, all interest charges under the **Project Financing Agreement** will be suspended and no interest will accrue during such period, without prejudice to the rights of either the **Limited Partnership** or **Hydro** under the **Project Financing Agreement** other than with respect to such suspension of interest during such period.

Decision by Hydro

8.1.10 Notwithstanding the provisions of this Article 8, if the **Limited Partnership** determines to commence construction of the **Keeyask Project**, or to restart construction of the **Keeyask Project**, as the case may be, in accordance with the provisions of this Article 8, but the board of directors of **Hydro** determines prior to such commencement, or restart, not to commence construction of the **Keeyask Project**, or to restart construction of the **Keeyask Project**, as the case may be, the construction of the **Keeyask Project** shall not commence or shall not be restarted, as the case may be.

Business Case

8.1.11 **Hydro** will prepare a **Business Case** in respect of the **Keeyask Project** to support a decision of the **Limited Partnership** whether to proceed with the construction of the **Keeyask Project**, or whether to restart construction of the **Keeyask Project**, as the case may be. **Hydro** agrees:

- (a) to prepare such **Business Case** and provide a copy of the same on a confidential basis to the **Limited Partnership** and to the **KCN Investment Entities** as soon as it is approved by **Hydro's** executive committee for release to the **Limited Partnership** and the **Keeyask Investment Entities**;
- (b) that the approval by **Hydro's** executive committee referred to in clause (a), above, shall occur within one hundred and eighty (180) days preceding the **Construction Start Date**, or the date specified in the **Restart Notice** for the restart of construction, as the case may be;
- (c) to provide the **Limited Partnership** and the **KCN Investment Entities** on a confidential basis with copies of **Hydro's** working papers related to the preparation of the **Business Case** and to make its staff available to discuss such working papers and the **Business Case** prior to the same being finalized and approved by **Hydro's** executive committee for submission to the board of directors of **Hydro**; and
- (d) to provide in writing to the **KCN Investment Entities** any changes to such finalized **Business Case** not discussed in advance with the **KCN Investment Entities** through the process described in clause (c), above.

ARTICLE 9
HYDRO SERVICES

9.1 MANAGEMENT SERVICES

Management Services

9.1.1 The **General Partner** will delegate to **Hydro** and **Hydro** will agree to provide and perform, or to procure, the following services and functions:

- (a) providing all office, secretarial, telephone answering, bookkeeping and clerical services and office supplies required for the efficient carrying on of the **Business**;
- (b) paying all expenses incurred by or on behalf of the **Limited Partnership** in connection with the **Business**;
- (c) conducting the banking of the **Limited Partnership** with respect to the **Business**;
- (d) obtaining quotations for and purchasing insurance for the **Limited Partnership**;
- (e) preparing and maintaining separate and proper accounting records for expenses and revenues relating to the **Limited Partnership** in accordance with the requirements set forth in the **Limited Partnership Agreement**, the same to be and at all times to remain the property of the **Limited Partnership**, and furnishing the **Limited Partnership** with periodic reports as provided in the **Limited Partnership Agreement**;
- (f) preparing the **Annual Budget** to be presented to the **General Partner** for its consideration not less than ninety (90) days prior to the commencement of each **Fiscal Year**;
- (g) reporting quarterly to the **Limited Partnership**, or at such other times as may be requested by the **General Partner**, on the **Management Services** being performed and on the operation of the **Business**, and making recommendations with respect to changes, if any;
- (h) assisting the **Limited Partnership** in obtaining, if they have not already been issued, the **Closing Licences** following the processes set forth in the **Environmental Protocol** and obtaining any licences, permits, orders, authorizations and approvals as are required by the **Limited Partnership** following the **Construction Period**, all licences, permits, orders, authorizations and approvals as are required during construction being the responsibility of the

Project Manager under the **Construction Agreement**, and performing all services as are necessary or desirable to maintain compliance with the terms and conditions of all licences, permits, orders, authorizations and approvals, including the **Closing Licences**;

- (i) undertaking such follow-up, monitoring and reporting activities, including to the **Monitoring Advisory Committee**, as may be necessary or desirable or, in some cases, as may be required by **Regulatory Authorities**, in order to assess the accuracy of predictions, clarify uncertainties and track **Keeyask Project** induced changes to the environment and socio-economic conditions and generally monitoring and reporting periodically to the board of the **General Partner** on the performance of the **Keeyask Project**;
- (j) implementing and administering the **Reservoir Clearing Plan** and the **Waterways Management Program** and all **Environmental Protection Plans** (except during the **Construction Period**, when **Environmental Protection Plans** will be implemented and administered by the **Project Manager** under the **Construction Agreement**);
- (k) managing the public affairs and communications activities of the **Limited Partnership**;
- (l) coordinating the affairs and activities of the of the board of directors of the **General Partner** in relation to the **Business**; and
- (m) such other services or functions as shall be approved by resolution of the board of directors of the **General Partner** from time to time.

Covenants of Hydro in Respect of the Management Services

9.1.2 Without in any way limiting the duties of **Hydro** set out in this **JKDA**, **Hydro** agrees:

- (a) to maintain a separate account on behalf of the **Limited Partnership** and not commingle its own funds with any funds held by it on behalf of the **Limited Partnership**;
- (b) to permit the **General Partner** and its authorized representatives at any time during normal business hours on a **Business Day** to examine the books, records, computer-stored data, bank documents, correspondence, accounting procedures and practices, cost analyses and any other supporting financial data, including invoices, payments or claims and receipts pertaining to the **Business** or the **Management Services** in the possession or control of **Hydro** and furnish to the

General Partner and its authorized representatives such information with respect to the **Business** as they may from time to time reasonably request;

- (c) to comply with the instructions of the **General Partner** in relation to the performance of the **Management Services**;
- (d) to cooperate with the **Limited Partnership's** auditors in regard to the audit of the financial statements; and
- (e) to allocate to the **Limited Partnership** all indirect costs and expenses, including all overhead costs and expenses, incurred or paid for by **Hydro** in providing the **Management Services** in a manner that is reasonably consistent with the manner in which **Hydro** allocates its indirect costs and expenses to other generating stations that are components of the **Integrated Power System** but are wholly owned by **Hydro**.

Management Services Costs

9.1.3 The **General Partner** on behalf of the **Limited Partnership** shall pay the **Management Services Costs** to **Hydro**. **Hydro's** invoices to the **Limited Partnership** shall be itemized as reasonably requested by the **General Partner**, but in any event shall provide sufficient detail to support all costs and expenses billed. **Hydro** shall provide a report annually to the **Limited Partnership** detailing **Hydro's** labour costs and the allocation of **Hydro's** indirect costs and expenses that form part of its billings to the **Limited Partnership**, when requested by the **General Partner**, acting reasonably. For greater certainty, **Hydro** shall not be entitled to recover as **Management Services Costs**, any damages or costs awarded against **Hydro** by an **Expert** or by an **Arbitrator** pursuant to the provisions of this **JKDA**.

9.2 O & M SERVICES AND SYSTEM OPERATIONS SERVICES

O & M Services

9.2.1 **Hydro** will have, and the **Limited Partnership** will agree and will grant to **Hydro**, the right and authority to provide, and **Hydro** will provide, the **O & M Services** to the **Limited Partnership** in accordance with such guidelines, procedures, decisions, practices and policies, as may be made or established and as may be amended by **Hydro** from time to time as **Hydro**, in its sole discretion deems appropriate, to achieve the objectives set out in the annual **Operating Plan**.

System Operations Services

9.2.2 For so long as the **Keeyask Generating Station** is operational, it will be controlled, operated and dispatched by **Hydro** as a component of the **Integrated Power System** and **Hydro** will have, and the **Limited Partnership** will agree and will grant to **Hydro**, the right

and authority to do such things as may be necessary or desirable in order to control, operate and dispatch the **Keeyask Generating Station** as a component of the **Integrated Power System**. **Hydro** will provide the **System Operations Services** in accordance with such guidelines, procedures, decisions, practices and policies, as may be made or established and as may be amended by **Hydro** from time to time as **Hydro**, in its sole discretion deems appropriate.

Acknowledgments

9.2.3 It is acknowledged and agreed that:

- (a) subject to the **System Operations Service Parameters**, **Hydro** shall operate and maintain the **Keeyask Project** as a component of the **Integrated Power System** and will operate the **Integrated Power System** in a manner that **Hydro** considers beneficial to the **Integrated Power System**;
- (b) **Hydro** retains the right and authority to operate and maintain other facilities that also are components of the **Integrated Power System**, as **Hydro** in its sole discretion deems appropriate;
- (c) in doing what **Hydro** considers to be beneficial for the **Integrated Power System**, the benefits which might otherwise be available to the **Limited Partnership** from the **Keeyask Project**, were it not operated as a component of the **Integrated Power System**, may not be maximized;
- (d) under no circumstances can the **Limited Partnership**, the **General Partner** or any other person or party on the **Limited Partnership's** behalf, direct or constrain in any manner whatsoever **Hydro's** sole ability and authority to control, operate and dispatch the **Integrated Power System**, including the **Keeyask Project** as part of that system, in such manner as **Hydro** in its sole discretion deems appropriate;
- (e) without limiting the generality of (d), above, under no circumstances can the **Limited Partnership**, the **General Partner** or any other person or party on the **Limited Partnership's** behalf take any action that will adversely impact on safety, licensing, and environmental considerations in respect of the operation of the **Integrated Power System**, including the **Keeyask Project** as part of that system;
- (f) the right and authority granted to **Hydro** to perform the **O & M Services** and **System Operations Services** are in addition to the right and authority granted to **Hydro** to control, operate and dispatch the **Keeyask Project** pursuant to the provisions of the **Interconnection and Operating Agreement**; and

- (g) **Hydro** shall be the operational contact on behalf of the **Limited Partnership** with full authority to receive and provide directions and instructions on behalf of the **Limited Partnership** as required from time to time in respect of all matters concerning the **O & M Services** and **System Operations Services**.

Covenants of Hydro in Respect of the Services

9.2.4 Without in any way limiting the duties of **Hydro** set out in this **JKDA**, **Hydro** agrees:

- (a) to apply for and obtain and, for so long as it is performing the **Services**, maintain in full force and effect, all permits, licences and approvals which may be necessary under **Applicable Laws** in order to enable **Hydro** to perform the **Services**;
- (b) to perform all **Services** in accordance with **Applicable Laws**, and upon receiving notice or obtaining knowledge of an infraction or threat of an infraction of such **Applicable Laws** or of any third party claim related to the **Business**, to notify the **General Partner** promptly of such infraction, threat of infraction or third party claim, and assist the **Limited Partnership** in taking all necessary steps to remedy or prevent such infraction;
- (c) to perform all **Services** in accordance with any applicable terms, conditions and limitations contained in this **JKDA** and in the **Limited Partnership Agreement**;
- (d) to abide by the **O & M Service Parameters** and the **System Operations Service Parameters** in providing the **O& M Services** and the **System Operations Services**, respectively;
- (e) to abide by the **Operating Cost Allocation Parameters** in determining and allocating **Operating Services Costs** to the **Keeyask Project**;
- (f) to perform the **O & M Services** in accordance with **Good Utility Practice**; and
- (g) to exclude costs or expenses attributable to the construction or operation of the **CRD** from any indirect costs and expenses, including overhead costs and expenses, allocated to the **Limited Partnership** in respect of the **Services**.

Operating Services Costs

9.2.5 The **Limited Partnership** shall pay the **Operating Services Costs** to **Hydro**. For greater certainty, **Hydro** shall not be entitled to recover as **Operating Services Costs**, any damages or costs awarded against **Hydro** by an **Expert** or by an **Arbitrator** pursuant to the provisions of this **JKDA**.

Annual Report

9.2.6 Within one hundred and twenty (120) days of the end of each **Fiscal Year**, **Hydro** shall provide the **Limited Partnership** with a report describing the **O & M Services** provided in the year just ended, together with an itemized listing of all **Operating Services Costs** billed to the **Limited Partnership** in the year, including a written report on how such **Operating Services Costs** were determined and allocated to the **Limited Partnership**. The **Limited Partnership** shall provide a copy of the report to each **Limited Partner**.

Additional Report in respect of the Integrated Power System

9.2.7 Within one hundred and twenty (120) days of the end of each **Fiscal Year**, **Hydro** shall provide the **Limited Partnership** with a written report on the control, operation and dispatch of the **Integrated Power System** in the year just ended, including the **Keeyask Project** as part of that system. The **Limited Partnership** shall provide a copy of the report to each **Limited Partner**. The report will include:

- (a) daily averages for the following:
 - (i) Missi Falls Control Structure outflow;
 - (ii) Notigi Control Structure outflow;
 - (iii) South Indian Lake water level;
 - (iv) Lake Winnipeg water level;
 - (v) Lake Winnipeg outflow;
 - (vi) Split Lake inflow;
 - (vii) **Keeyask Generating Station** power house outflow;
 - (viii) **Keeyask Generating Station** forebay level;
 - (ix) **Keeyask Generating Station** tailrace level;
- (b) hourly averages for the **Keeyask Generating Station** generation and spillway discharge; and
- (c) all unit outages at the **Keeyask Generating Station** and the reason for such outages.

Information Regarding Downstream Facilities

9.2.8 Upon the reasonable request of the **Keeyask Cree Nations**, acting by a **KCN Majority**, **Hydro** will provide information to the **Keeyask Cree Nations** with respect to power house outflows, forebay levels and tailrace levels for the Kettle, Long Spruce and Limestone generating stations and other **Hydro** generating stations, if any, located on the Burntwood and Nelson River system.

O & M Operational Audit

9.2.9 At least once every five (5) year period, commencing with the end of the **Fiscal Year** occurring five (5) years after the **Final Closing**, **Hydro** will conduct an internal operational audit of the **O & M Services**. **Hydro** will provide the **Limited Partnership** with a copy of the final internal audit report in respect of such audit and the **Limited Partnership** will provide a copy of such report to each **Limited Partner**. Such internal operational audits will be conducted by **Hydro** in a manner that is reasonably consistent with **Hydro's** requirements established from time to time for internally auditing its performance of operation and maintenance services in respect of other hydro-electric generating facilities that are components of the **Integrated Power System**.

Keeyask Cree Nation Observer in Audit

9.2.10 The **Keeyask Cree Nations**, acting by a **KCN Majority**, will be entitled to have one (1) representative present, as an observer, during the conduct of the audit referred to in subsection 9.2.9. Such representative will share his or her observations regarding the internal operational audit, together with any written materials received by him or her during the course of such audit, with each **KCN Investment Entity**.

Expert Reviews

9.2.11 The **Keeyask Cree Nations**, acting by a **KCN Majority**, may cause an **Expert** to review, on the terms and conditions set forth in Article 18, any or all of the following, as applicable:

- (a) whether the manner in which **Hydro** has provided the **O & M Services** has been in accordance with the **O & M Service Parameters**;
- (b) whether the manner in which **Hydro** has provided the **System Operations Services** has been in accordance with the **System Operations Service Parameters**; or
- (c) whether the manner in which **Hydro** has determined and allocated **Operating Services Costs** to the **Keeyask Project** has been in accordance with the **Operating Cost Allocation Parameters**.

Sole Remedy

9.2.12 Notwithstanding anything contained in this **JKDA**, for greater certainty, a review by an **Expert** pursuant to subsection 9.2.11 is the only remedy available to a **Keeyask Cree Nation** or its **KCN Investment Entity** with respect to **Hydro's** covenants, contained in clauses 9.2.4 (d) and (e) of this **JKDA**, to provide the **O & M Services** in accordance with the **O & M Service Parameters**, or to provide the **System Operations Services** in accordance with the **System Operations Service Parameters**, or to allocate the **Operating Services Costs** to the **Keeyask Project** in accordance with the **Operating Cost Allocation Parameters**, as the case may be.

9.3 ARBITRATION OF GOOD UTILITY PRACTICE

Material Loss

9.3.1 The **Keeyask Cree Nations**, acting by a **KCN Majority**, within one hundred and eighty (180) days of the date on which the **Keeyask Cree Nations** knew or ought to have known of a **Material Loss** occurring, and if they believe the **Material Loss** occurred as a result of **Hydro's** failure to provide the **O & M Services** in accordance with **Good Utility Practice**, may cause an **Arbitrator** to be appointed, in the manner provided in Article 19, to determine the matters set forth in subsection 9.3.2.

Determination by Arbitrator

9.3.2 An arbitration pursuant to this section 9.3 shall be solely for the purposes of determining:

- (a) whether a **Material Loss** has occurred;
- (b) if the **Arbitrator** finds that a **Material Loss** has occurred, whether, on the balance of probabilities, based on all of the facts and circumstances, such **Material Loss** occurred as a result of **Hydro's** failure to provide the **O & M Services** in accordance with **Good Utility Practice**; and
- (c) if the **Arbitrator** finds against **Hydro** pursuant to clause (b) above, the amount of damages, if any, suffered by the **Limited Partnership** as a result.

Limitation on Damages for Lost Profits

9.3.3 For the purposes of determining the damages suffered by the **Limited Partnership** pursuant to clause 9.3.2 (c), damages for lost profits, if any, shall be limited to a maximum of one (1) year's profits of the **Limited Partnership**.

Determination Binding

9.3.4 A determination by an **Arbitrator** pursuant to subsection 9.3.2 will be final and binding on the **Parties**, the **Limited Partnership** and the **KCN Investment Entities** and the amount, if any, determined by the **Arbitrator** to be the damages suffered by the **Limited Partnership** pursuant to clause 9.3.2 (c), will be paid by **Hydro** to the **Limited Partnership**.

Sole Remedy

9.3.5 Notwithstanding anything contained in this **JKDA**, for greater certainty, an arbitration pursuant to this section 9.3 is the only remedy available to a **Keeyask Cree Nation** or its **KCN Investment Entity** with respect to **Hydro's** covenant, contained in clause 9.2.4 (f) of this **JKDA**, to provide the **O & M Services** in accordance with **Good Utility Practice**.

9.4 GENERAL MATTERS PERTAINING TO THE SERVICES

Employees and Staff

9.4.1 **Hydro** agrees to employ and pay the wages and salaries of all personnel reasonably required in order to provide the **Services**. All personnel provided by **Hydro** will remain employees of **Hydro** and **Hydro** will be responsible for payment of their wages, employment insurance, workers' compensation, tax and pension deductions and remittances, holiday pay and all other matters arising out of the normal relationship of employer and employee, and **Hydro** will also be solely responsible for the supervision of the employees. **Hydro** agrees to indemnify and hold the **Limited Partnership**, its board of directors, limited partners, employees and agents harmless from any and all liabilities, fees, expenses, fines and penalties which may be assessed for any failure by **Hydro** to comply with any employment-related laws and regulations.

Services Not Exclusive

9.4.2 The **Limited Partnership** and the **General Partner** acknowledge and agree that **Hydro** will continue to be free to carry out current and future business projects and responsibilities, including owning, planning, constructing, operating, maintaining, controlling and dispatching existing and future hydro projects and to enter into contracts, including for the provision of management services, operating and maintenance services or control, operation and dispatch management with other parties, as it sees fit, whether or not such other projects, responsibilities or contracts are competitive with the **Business**.

Assessment of Fees, Taxes, Levies, Additional Costs

9.4.3 If any fees, taxes, levies, fines, penalties, costs, expenses, or any additional costs are assessed against **Hydro** by any **Regulatory Authority** in respect of the **Services**, or are suffered or incurred by **Hydro** due to non-compliance by the **Limited Partnership** of its covenants to **Hydro** under this **JKDA**, the **Limited Partnership** will indemnify and hold **Hydro**

harmless against any such fees, taxes, levies, fines, penalties, costs, expenses, or additional costs, including claims for indemnity or contribution made by third parties against **Hydro**, provided that there will be no indemnity in favour of **Hydro** where any such fees, taxes, levies, fines, penalties, costs, expenses, or additional costs were assessed against, or suffered or incurred by **Hydro**, as a result of a breach by **Hydro** of its obligations under this **JKDA**, or to the extent **Hydro** is found liable for gross negligence or wilful misconduct in the performance of the **Services**.

Billings and Payment

9.4.4 All billings shall be calculated monthly and reconciled monthly and yearly. The **Limited Partnership** will pay **Hydro's** monthly invoices in respect of the **Management Services Costs** and the **Operating Services Costs**, without deduction or set-off, within five (5) **Business Days** following receipt. Monthly invoices received by the **Limited Partnership** prior to 4:00 p.m. **CST** on any **Business Day** shall be deemed to have been received that day. Monthly invoices received on any day which is not a **Business Day** or after 4:00 p.m. **CST** on any **Business Day** will be deemed to have been received on the first **Business Day** that follows.

Covenants of the Limited Partnership

9.4.5 Without in any way limiting the duties of the **Limited Partnership** set out in this **JKDA**, the **Parties** agree that the **Limited Partnership**, at the **Limited Partnership's** expense, will:

- (a) seek, obtain, maintain, comply with and as necessary, review and modify from time to time, at the **Limited Partnership's** sole expense, all licences, permits consents, approvals, certificates, registrations, or authorizations as are required to be obtained in respect of the **Keeyask Project**, including the **Closing Licences**, it being acknowledged that the **General Partner** has delegated this duty to **Hydro** pursuant to subsection 9.1.1;
- (b) comply with any obligations imposed on **Hydro** by third parties that **Hydro** has accepted or would, in the normal course of business, have accepted as necessary in order to operate and dispatch the **Integrated Power System**;
- (c) 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**, in such instances where **Hydro** advises same is required, including, without limitation, the provision of timely information or data and compliance with procedures decisions and policies;
- (d) be bound by those requirements, decisions and policies of the **Applicable Reliability Organization**, in such instances where **Hydro** advises same is

required, in the same manner and to the same extent as **Hydro** (or any affiliate of **Hydro**), is bound;

- (e) reimburse **Hydro** for actual costs and expenses including filing fees imposed on **Hydro**, or any affiliate of **Hydro**, by the **Applicable Reliability Organization** or **Regulatory Authority** or pursuant to the **Hydro Contractual Obligations** which are associated with the **Keeyask Project** or as a result of or in connection with **Hydro** providing the **Services**;
- (f) cooperate with **Hydro** in the interconnection of the **Keeyask Project** to the **Integrated Power System** and comply with all provisions of the **Interconnection and Operating Agreement**;
- (g) modify the design of the **Keeyask Project** at any time in a manner consistent with **Hydro's** direction to ensure that the interconnection and synchronous operation of the **Keeyask 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, provided that any such modification does not result in a change to a **Fundamental Feature**;
- (h) provide and grant to **Hydro** access to the **Keeyask Project** as may be required by **Hydro** and provide all information, documents or data related to the **Keeyask Project** that **Hydro** reasonably may require; and
- (i) put in place a plan of insurance consistent with practices in the industry and appropriate for the **Business**, it being acknowledged that the **General Partner** has delegated this duty to **Hydro** pursuant to subsection 9.1.1.

Assignment

9.4.6 Except for an assignment by **Hydro** to any affiliate of **Hydro**, none of the **Services** may be assigned by **Hydro** without the prior approval of the board of directors of the **General Partner**, subject to subsections 9.4.7 and 9.4.8.

Subcontracting O & M Services

9.4.7 **Hydro** will have the right to subcontract any or all of the **O & M Services** to a subcontractor selected by **Hydro** in its discretion.

Subcontracting Management Services or System Operations Services

9.4.8 Except for such of the **Management Services** or the **System Operations Services** as **Hydro** typically would subcontract in whole or in part in the ordinary course of its business, **Hydro** will not subcontract, except to an affiliate, any of the **Management Services** or

the **System Operations Services**, without the prior approval of the board of directors of the **General Partner**.

Status of Hydro

9.4.9 **Hydro** will perform the **Services** as an independent contractor to the **Limited Partnership** and will not be an agent or employee of the **Limited Partnership**. Without limiting the generality of the foregoing, the **Limited Partnership** will have no right to hire, fire, discipline or promote **Hydro** employees.

Force Majeure

9.4.10 Neither the **Limited Partnership** nor **Hydro** will be responsible or liable for, or be deemed in breach of any provision of this Article because of any delay or failure in the performance of their respective obligations pursuant to this Article to the extent such performance is prevented or delayed due to a **Force Majeure**, provided that:

- (a) the party experiencing the **Force Majeure** will exercise due diligence in endeavouring to overcome any **Force Majeure** impediment to its performance, but settlement of its strikes and other labour difficulties will be entirely within its discretion;
- (b) the party experiencing the **Force Majeure** will promptly give oral notification to the other party which notification will be confirmed in writing within five (5) calendar days after such party has learned of the **Force Majeure** and every thirty (30) calendar days thereafter, and such written notification will give a full and complete explanation of the **Force Majeure** delay and its cause, the status of the **Force Majeure**, and the actions such party is taking and proposes to take to overcome the **Force Majeure**;
- (c) the party experiencing the delay will undertake reasonable measures to remedy the **Force Majeure** with minimum impact to the **Keeyask Project** operations; and
- (d) in the event of **Force Majeure**, the **Limited Partnership** will continue to pay **Management Services Costs** and the **Operating Services Costs** to **Hydro** for the performance of any part of the **Services** that were deemed necessary to be performed by **Hydro**; and any reasonable wage or expense obligations incurred by **Hydro** during the **Force Majeure**; and all staff costs and expenses incurred for the transportation, lodging, demobilization, re-mobilization and additional administration associated with the relocation of **Hydro's** personnel, excepting such staff costs and expenses incurred when the cause of the **Force Majeure** was a strike or other labour difficulty.

Limitation of Liability

9.4.11 Subject to clauses 9.2.4 (d), (e) and (f), subsection 9.2.11, and section 9.3, **Hydro** will not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise to the **Limited Partnership** for any damages whatsoever, including without limitation, direct, actual damages, incidental, consequential, punitive, special, exemplary, or indirect damages arising or resulting from any act or omission in any way associated with any provision of the **Services**, except to the extent **Hydro** is found liable for gross negligence or wilful misconduct in the performance of the **Services**.

Indemnification

9.4.12 Except where **Hydro** was found liable to the **Limited Partnership** due to **Hydro's** gross negligence or wilful misconduct in the performance of the **Services**, or liable to the **Limited Partnership** pursuant to a breach of the covenants contained in clauses 9.2.4 (d), (e) and (f) in the manner provided in this Article 9, 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 all legal fees on a solicitor and client basis, and other professional fees and disbursements, interest, penalties and amounts paid in settlement, suffered, or incurred by **Hydro**, as a result of **Hydro** performing the **Services** or as a result of, or arising directly or indirectly out of, or in contravention of, any breach or non-performance by the **Limited Partnership** of any covenant to be performed by or pursuant to this Article.

9.5 TERM AND TERMINATION

Term

9.5.1 The term for the provision of the **Management Services** will commence on the date that the **Limited Partnership** is established. The term for the **O & M Services** and the **System Operations Services** will commence coincidentally with the commencement of the commissioning of the first of the turbines comprising the **Keeyask Generating Station**. The term for the provision of the **Services** will continue indefinitely unless terminated as provided in subsection 9.5.2.

Termination

9.5.2 The **Management Services**, the **O & M Services** or the **System Operations Services** may be terminated by **Hydro**, at any time after twenty-five (25) years following the commencement of such services as provided in subsection 9.5.1, upon two (2) years' notice to the **General Partner**, but in respect of the **O & M Services** or the **System Operations Services**, only if **Hydro** has ceased or is ceasing to perform operations and maintenance services or control operation and dispatch services, as the case may be, in respect of other operating hydro-electric facilities that are components of the **Integrated Power System**.

No Diminution on Termination

9.5.3 No termination of the **Management Services**, the **O & M Services** or the **System Operations Services** will operate to waive, diminish or impair any right that has accrued to any party prior the effective date of termination or expiry and shall not impair the rights of **Hydro** to the payment of its fees and expenses, or of the **Limited Partnership**, the **General Partner** or **Hydro** to be indemnified under the provisions of this Article, which rights shall survive such termination. On the termination of the **Management Services**, the **O & M Services** or the **System Operations Services**, as the case may be, **Hydro** shall cooperate and assist with the transition of such services to the new provider, but thereafter shall have no further obligation to the **Limited Partnership** in respect of such services, under the terms of this Article, except as provided in this section, and the **Limited Partnership** shall be required to make alternate arrangements for such services.

ARTICLE 10

POWER PURCHASE AND TRANSMISSION ARRANGEMENTS

10.1 GENERAL

Keeyask Transmission Project

10.1.1 The **Keeyask Transmission Project** and **Bipole III** are expressly excluded from the definition of the **Keeyask Project**, and the **Keeyask Transmission Facilities** do not form part of the assets of the **Limited Partnership**. For licensing purposes, it currently is intended that the **Keeyask Transmission Project** and **Bipole III** will be treated as separate projects and that separate environmental impact statements will be filed by **Hydro** with **Regulatory Authorities**.

Relationship to the Keeyask Project

10.1.2 Although a separate project, the **Keeyask Transmission Project**, nonetheless is necessary to facilitate the sale of the energy produced by the **Limited Partnership** to **Hydro** and to connect the **Keeyask Generating Station** to the **Integrated Power System**, and transmission costs will be charged to the **Limited Partnership** as provided in this Article and in the **PPA** and the **Interconnection and Operating Agreement**.

10.2 POWER PURCHASE AND TRANSMISSION

Power Purchase

10.2.1 The **Parties** agree that, subject to the transmission costs arrangements being substantially as set forth in subsection 10.2.2 of this **JKDA**, the **Limited Partnership** will sell to **Hydro** and **Hydro** will purchase from the **Limited Partnership** all of the energy and capacity of the **Keeyask Generating Station** on the terms and conditions set forth in the **PPA**, to be entered into by the **Limited Partnership** and **Hydro** on the **Initial Closing Date**.

Transmission Costs

10.2.2 The **Parties** acknowledge that the transmission arrangements for the **Keeyask Transmission Project** have not been determined fully as at the **Date of this JKDA**. Accordingly, the **Parties** agree to the following principles in the allocation of transmission costs to the **Limited Partnership**:

- (a) if the development of **Bipole III** proceeds and **Bipole III**, either alone or in conjunction with Bipoles I and/or II, is intended to be used by **Hydro**, to any extent, for the transmission of energy generated by the **Keeyask Generating Station**, then subject to **Hydro**, acting reasonably, determining as of the **First**

Completion Date that **Bipole III** and the associated collector facilities are in-service to the extent necessary, such that they provide sufficient transmission capability for the **Keeyask Generating Station** based on **Hydro's** intended use of **Bipole III** and the associated collector facilities, in respect of the **Keeyask Generating Station**, as part of the **Integrated Power System**:

- (i) the **Limited Partnership** will not be charged for and will not pay any capital or operating costs, including operation and maintenance costs, of **Bipole III**, or any costs of other benefit-related arrangements, if any, associated with **Bipole III**;
- (ii) the **Limited Partnership** will not be charged for and will not pay any capital or operating costs, including operation and maintenance costs, of any new high voltage alternating current transmission lines or associated stations or related works that may be required for north-south transmission, in addition to **Bipole III**, or any costs of other benefit-related arrangements, if any, associated with such lines, stations and works;
- (iii) the **Limited Partnership** will not be charged for and will not pay the capital costs of any new interconnection facilities between the Province of Manitoba and neighbouring jurisdictions, or for any new capital costs incurred to maintain or enhance the capacity of existing interconnection facilities; but
- (iv) the **Limited Partnership** will be charged for, and will pay all of the capital and operating costs, including operation and maintenance costs, for that part of the **Keeyask Transmission Facilities** consisting of all incremental northern high voltage alternating current collector transmission lines and associated stations and related works, as determined by **Hydro** (Transmission and Distribution Business Unit), required for the **Keeyask Generating Station** but not otherwise required for **Bipole III**;

and

- (b) if the development of **Bipole III** does not proceed, or if the development of **Bipole III** does proceed and **Bipole III**, either alone or in conjunction with Bipoles I and/or II, is not intended to be used by **Hydro**, to any extent, for the transmission of energy generated by the **Keeyask Generating Station**, or if **Hydro**, acting reasonably, determines as of the **First Completion Date** that **Bipole III** and the associated collector facilities are not in-service to the extent necessary, such that they do not provide sufficient transmission capability for the **Keeyask Generating Station** based on **Hydro's** intended use of **Bipole III** and the associated collector facilities, in respect of the **Keeyask Generating Station**, as part of the **Integrated Power System**, then:

(i) the **Limited Partnership** will be charged for and will pay:

- A. commencing at the **First Completion Date**, one hundred and thirteen million (\$113,000,000) dollars of the capital costs of the **Keeyask Transmission Facilities** as at the **First Completion Date**, which amount will be amortized and converted to an annual payment in the manner provided in the **PPA**, and, if the **First Completion Date** is later than 2018, the one hundred and thirteen million (\$113,000,000) dollars will be adjusted for inflation by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2017 as the base year; and
- B. on the **First Completion Date**, ninety-five thousand (\$95,000) dollars of the operating costs, including operation and maintenance costs, of the **Keeyask Transmission Facilities** and, if the payment occurs after 2018, then the ninety-five thousand (\$95,000) dollars will be adjusted from December 31, 2018 to the date of payment based on the cumulative increase in the Consumer Price Index for Manitoba, using 2017 as the base year, and annually thereafter, ninety-five thousand (\$95,000) dollars per year, adjusted annually for inflation, from 2018 to the date of payment, by the annual percentage change in the Consumer Price Index for Manitoba, using 2017 as the base year; and
- C. after forty-five (45) years from the **First Completion Date**, one hundred and fifteen million (\$115,000,000) dollars of the capital costs of the **Keeyask Transmission Facilities**, which amount will be amortized and converted to an annual payment in the manner provided in the **PPA**, and which one hundred and fifteen million (\$115,000,000) dollars will be adjusted for inflation by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2017 as the base year;

as a contribution towards the incremental high voltage alternating current transmission lines and associated stations and related works that may be required for north/south transmission in respect of the **Keeyask Project**, as determined by **Hydro** (Transmission and Distribution Business Unit);

- (ii) the **Limited Partnership** will not be charged for and will not pay the capital costs of any new interconnection facilities between the Province of Manitoba and neighbouring jurisdictions or for any new capital costs incurred to maintain or enhance the capacity of existing interconnection facilities; and

- (iii) the **Limited Partnership** will not be charged for and will not pay any capital or operating costs, including operation and maintenance costs, of **Bipole III**, or any costs of other benefit-related arrangements, if any, associated with **Bipole III**.

Interconnection Service

10.2.3 The **Keeyask Generating Station** will receive interconnection service to the **Integrated Power System** for the rated capacity of the station of the nature and scope required by **Hydro**.

Charging of Transmission Costs

10.2.4 Transmission costs allocated to the **Limited Partnership** as set out in subsection 10.2.2 will be charged to the **Limited Partnership** under the **PPA** and/or the **Interconnection and Operating Agreement**. Other than costs charged to the **Limited Partnership** under the **PPA** and/or under the **Interconnection and Operating Agreement**, which will include the costs set out in subsection 10.2.2, the **Limited Partnership** will not be charged and will not pay for any new transmission capital, operating and maintenance costs.

ARTICLE 11

ADVERSE EFFECTS OF THE PROJECT

11.1 GENERAL

Design Features

11.1.1 The **Keeyask Cree Nations** and **Hydro** have worked closely together in the planning and design of the **Keeyask Project** in an effort to avoid and alleviate, to the extent reasonably possible, adverse effects arising from the location, design, construction, development, operation and maintenance of the **Keeyask Project**. These measures are reflected in the design features of the **Keeyask Project** as set out in the **Project Description**, as well as in the **Reservoir Clearing Plan** and the **Waterways Management Program**.

Reservoir Clearing and Waterways Management

11.1.2 Subject to requirements of **Regulatory Authorities**, including pursuant to the **Closing Licences**, the **Limited Partnership** will undertake, or cause to be undertaken:

- (a) the pre-flooding and post-flooding clearing of the reservoir of the **Keeyask Generating Station**, in accordance with the standards and guidelines set out in the **Reservoir Clearing Plan**, attached hereto as Schedule 11-1; and
- (b) the waterways management initiatives set out in the **Waterways Management Program**, attached hereto as Schedule 11-2.

11.2 ADVERSE EFFECTS

Keeyask Project Adverse Effects

11.2.1 The **Limited Partnership** will be responsible for addressing adverse effects arising from the **Keeyask Project**, and all costs related to addressing such adverse effects, including the costs of consultation, negotiation, mitigation measures and monetary compensation, will be costs of the **Keeyask Project**.

Adverse Effects on the Keeyask Cree Nations

11.2.2 Notwithstanding the measures described in section 11.1, the **Keeyask Project** nonetheless will cause some unavoidable adverse effects to the **Keeyask Cree Nations** or to **Members**, for which the **Limited Partnership** will provide appropriate replacements, substitutions or opportunities to offset such unavoidable adverse effects and will pay fair monetary compensation for any residual adverse effects, as provided in the **KCN Adverse Effects Agreements**.

KCN Adverse Effects Agreements

11.2.3 **York Factory** and **Fox Lake** agree to enter into their respective **KCN Adverse Effects Agreement** with **Hydro** on the date they each sign this **JKDA**. Each **Keeyask Cree Nation** agrees that on the **Initial Closing Date**, **Hydro** and the **Limited Partnership** shall enter into an agreement for the assumption by the **Limited Partnership** of all of **Hydro's** obligations under each such **KCN Adverse Effects Agreement**, except for those obligations which are expressly stated therein to be continuing obligations of **Hydro**, and each **KCN Adverse Effects Agreement** will provide that **Hydro** will be fully released from all such obligations, except as expressly provided, and each **Keeyask Cree Nation** will agree to indemnify and save **Hydro** harmless from any liability, direct or indirect, of any nature or kind, in that regard.

Potential Adverse Effects on Others

11.2.4 The **Limited Partnership**, based on extensive review, consultation, Aboriginal traditional knowledge and conventional scientific analysis, which will be documented in the **EIS**, and the results of the public hearings and review processes conducted by **Regulatory Authorities**, will determine whether the development of the **Keeyask Project** potentially could result in any significant adverse effects on other persons or entities with interests in areas influenced by the **Keeyask Project**. If the **EIS** identifies any other persons or entities who or which potentially may suffer adverse effects as a result of the **Keeyask Project**, and those adverse effects cannot be avoided, the **Limited Partnership** will consult with each such person or entity at the earliest reasonable time and address such adverse effects.

Existing Commitments

11.2.5 **Hydro** has a number of existing contractual commitments with parties, other than the **Keeyask Cree Nations**, located on the waterways that contribute to the inflows into the **Keeyask Project**, as described in Schedule 11-3. The **Limited Partnership** may be required to implement certain processes or enter into agreements with the parties to such agreements relative to potential adverse effects of the **Keeyask Project**. In this regard **Hydro** agrees to:

- (a) give notice to the **Limited Partnership** of any claim being advanced by any party pursuant to any such agreement;
- (b) consent to, or support any application by the **Limited Partnership**, if the **Limited Partnership** is not named as a party, to be named as a party to any such claim;
- (c) not settle any such claim without the written consent of the **Limited Partnership** to such settlement; and
- (d) not enter into any agreements, or pay any amounts, other than in respect of process costs, relating to such contractual commitments, without the written consent of the **Limited Partnership**.

Costs Related to Existing Commitments

11.2.6 Costs incurred in following the processes or entering into the agreements described in subsection 11.2.5, to the extent they relate to the **Keeyask Project**, will be costs of the **Keeyask Project**. **Hydro** agrees that in allocating any such costs to the **Keeyask Project**, it will do so in a manner that is reasonably consistent with the manner in which **Hydro** allocates such costs to other generating stations that are also components of the **Integrated Power System** but are wholly owned by **Hydro**.

On-Going Monitoring for Adverse Effects

11.2.7 The **Limited Partnership** will conduct such on-going monitoring as it considers necessary or desirable or as may be required by **Regulatory Authorities**, in order to assess the validity and accuracy of the predictions in the **EIS** regarding the adverse effects of the **Keeyask Project**. It is acknowledged that the **General Partner** has delegated this responsibility to **Hydro** pursuant to subsection 9.1.1 of this **JKDA**.

Unanticipated Adverse Effects

11.2.8 If the information obtained from on-going monitoring subsequently discloses unanticipated adverse effects caused by the **Keeyask Project**, then such adverse effects will be addressed by the **Limited Partnership** as set out in the **KCN Adverse Effects Agreements** and in any other adverse effects agreements entered into by the **Limited Partnership**.

ARTICLE 12

TRAINING AND EMPLOYMENT

12.1 PRE-PROJECT TRAINING

Training Initiative

12.1.1 The **Training Initiative** is aimed at facilitating the training of **Northern Aboriginals** to take advantage of employment opportunities generated by the **Keeyask Project** and the **Wuskwatim Project**.

Responsibility for Training Delivery

12.1.2 Each of the **Aboriginal Training Partners** is responsible for the design, delivery and implementation of community-based training to **Northern Aboriginals** in accordance with the proposal for the **Training Initiative** and in their respective **Contribution Sub-Agreements**.

Funding for the Training Initiative

12.1.3 Subject to the provisions of the **Contribution Agreements**, a number of parties agreed to contribute to the **Training Initiative Funds** in amounts not to exceed the following contributions:

- | | | |
|-----|---|--------------------|
| (a) | Human Resources and Skills Development Canada | \$22 million; |
| (b) | Hydro | \$20 million; |
| (c) | Manitoba | \$10 million; |
| (d) | Western Economic Diversification | \$5.0 million; |
| (e) | Indian and Northern Affairs Canada | \$3.3 million; and |
| (f) | Aboriginal Training Partners (in-kind) | \$1.7 million. |

Hydro Contribution

12.1.4 The contribution of **Hydro** to the **Training Initiative** set out in subsection 12.1.3 will form part of the **Pre-Closing Liabilities**.

Training Initiative Funds for the Keeyask Project

12.1.5 A total of up to forty-five million (\$45,000,000) dollars of **Training Initiative Funds** has been allocated for pre-project training for **Members** and **Northern Aboriginals** (other than **Members**) for jobs on the **Keeyask Project** and the **Wuskwatim Project**, as follows:

- (a) a total of up to seventy-five (75%) per cent of this amount, or thirty-three million, seven hundred and fifty thousand (\$33,750,000) dollars, comprise the **KCN Training Funds**, available to the **Keeyask Cree Nations** for the pre-project training of **Members** in accordance with the **Contribution Agreements** or the **Keeyask Cree Nations'** respective **Contribution Sub-Agreements**, as the case may be; and
- (b) a total of up to twenty-five (25%) per cent of this amount, or eleven million, two hundred and fifty thousand (\$11,250,000) dollars, is available for the pre-project training of **Northern Aboriginals** other than **Members**.

Apportionment of KCN Training Funds

12.1.6 Pursuant to their respective **Contribution Sub-Agreements**, the **KCN Training Funds** have been apportioned among the **Keeyask Cree Nations** as follows:

- (a) **TCN** \$18.63 million;
- (b) **War Lake** \$1.62 million;
- (c) **York Factory** \$6.75 million; and
- (d) **Fox Lake** \$6.75 million.

Early Advances of KCN Training Funds

12.1.7 In order to provide funding for the pre-project training of **Members** prior to the establishment of the **Training Consortium**, **Hydro** provided the **Keeyask Cree Nations** with early advances of **KCN Training Funds** in the aggregate sum of three million, six hundred and twenty one thousand, one hundred and ninety-three (\$3,621,193) dollars in respect of **CNP**, seven hundred and eight-five thousand, seven hundred (\$785,700) dollars in respect of **Fox Lake** and six hundred and sixty-eight thousand, five hundred (\$668,500) dollars in respect of **York Factory**. All such early contribution amounts are included within the amounts set out in subsection 12.1.6

Terms of Early Advances of KCN Training Funds

12.1.8 Under the terms of **Hydro's Contribution Agreement** with **WKTC**:

- (a) all early advances of **KCN Training Funds** by **Hydro** are deemed to be contributions by **Hydro** to **WKTC**; and
- (b) the **Early Contribution Agreements** are assigned by **Hydro** and each of **CNP** and **Fox Lake** to **WKTC** and are supplanted and replaced by the **Contribution Sub-Agreements** between each of the **Keeyask Cree Nation** and **WKTC**, such that the amount of such early contributions in respect of each **Keeyask Cree Nation** shall be governed by the terms of its **Contribution Sub-Agreement** with **WKTC**.

Identification of Training Opportunities

12.1.9 Under the terms of the **UMA, Manitoba** and **Hydro** each acknowledged that, in accordance with the terms of a funding proposal known as the "ASEP Proposal", they would, among other things, identify training and employment opportunities on existing and planned infrastructure or other projects of which trainees under the **Training Initiative** could take advantage.

No Additional Access to Training Initiative Funds

12.1.10 Access by the **Keeyask Cree Nations** or their respective **Members** to **Training Initiative Funds** shall be limited to the **KCN Training Funds**. None of the **Keeyask Cree Nations** or their respective **Members** will be entitled to access **Training Initiative Funds** allocated for pre-project training for members of **NCN** or for other **Northern Aboriginals** without first obtaining the consents of the contributors referred to in subsection 12.1.3.

Revenue Advances

12.1.11 Prior to the **Date of this JKDA**, **Hydro** provided each of **TCN, War Lake** and **Fox Lake** with **Revenue Advances** related to the funding of certain training activities, which were repayable to **Hydro**, together with interest. Each of **CNP** (on behalf of **TCN** and **War Lake**) and **Fox Lake** agrees to enter into, and agree to cause its **KCN Investment Entities** to enter into, its **Revenue Advance Agreement** set out in Schedules 12-1 and 12-2, as applicable, on the date it signs this **JKDA**.

12.2 THE BNA

Employment Preference and Direct Hiring

12.2.1 Employment on the **Keeyask Project** will be governed by the provisions of the **BNA**. **Hydro** will not seek to amend, or cause the **HPMA** to amend, the following provisions of the **BNA** during the term of the **BNA**, which ends on December 31, 2017:

- (a) the preference provisions of the **BNA** (specifically Article 12.1.1.3 of the **BNA**, including the definitions applicable to Article 12.1.1.3), which provide that first preference for employment on all major northern hydro-electric generation and converter station projects undertaken by **Hydro** (or by **Hydro** in partnership with others) on the Burntwood or Nelson Rivers, for which the first tender call for contracted on-site construction work, excluding exploration work, for each applicable new generating station or convertor station, respectively, has been issued by **Hydro** on or before December 31, 2015, will be offered to job qualified **Northern Aboriginals** who qualify as **Northern Residents** who are registered with **Manitoba** (as the job placement and referral agency for the **Keeyask Project**) and who reside in the **Churchill/ Burntwood/ Nelson River Area**; and
- (b) the direct hire provisions (specifically Article 2.9 of the **BNA**), which allow the **Keeyask Cree Nations** to employ directly **Northern Aboriginals** who qualify as **Northern Residents** who are registered with **Manitoba** (as the job placement and referral agency for the **Keeyask Project**) under **Direct Negotiation Contracts** without having to follow the preference provisions of the **BNA**.

Re-Negotiation of the BNA

12.2.2 If there has not been a **Construction Start** prior to December 31, 2015, **Hydro** undertakes to cause the **HPMA** to submit the provisions of the **BNA** referred to in clauses 12.2.1 (a) and (b) to the **Allied Hydro Council** during any re-negotiation of the **BNA** for any additional term. If any new collective labour agreement applicable to the **Keeyask Project** does not contain preference provisions reasonably equivalent to the preference provisions referred to in clauses 12.2.1 (a) and (b), **Hydro** agrees with the **Keeyask Cree Nations** to re-negotiate the employment-related provisions of this **JKDA** prior to a **Substantial Construction Start**.

Letter of Agreement

12.2.3 Subject to subsection 12.2.1, amendments to the **BNA** specific to the **Keeyask Project** will be set out in a **Letter of Agreement**, to be negotiated by the **HPMA** with the **Allied Hydro Council**. The **Proposed Letter of Agreement** set out in Schedule 12-3 sets out the proposed terms for such **Letter of Agreement** that have been agreed to by the **Parties**. **Hydro** agrees to cause the **HPMA** to submit the **Proposed Letter of Agreement** to the **Allied Hydro Council** as a basis for negotiation and to negotiate a **Letter of Agreement** prior to the start of construction.

Keeyask Cree Nation Representatives

12.2.4 The **HPMA** negotiating team for the purposes of negotiating a **Letter of Agreement** with the **Allied Hydro Council** shall include two (2) **Members** appointed by **CNP** (one (1) by **TCN** and one (1) by **War Lake**) and one (1) **Member** appointed by each of **Fox Lake** and **York Factory**.

Letter of Agreement Negotiation Process

12.2.5 The representatives of the **Keeyask Cree Nations** referred to in subsection 12.2.4 shall act as observers only. In circumstances where the **Allied Hydro Council** rejects an issue that is subject to negotiation under the **Proposed Letter of Agreement**, the **HPMA** will follow the **BNA** negotiation process set out in Schedule 12-6, which includes providing an opportunity for the **Keeyask Cree Nations** to present their position on that issue at the bargaining table.

12.3 JOB PLACEMENT AND REFERRAL

Job Placement and Referral Services

12.3.1 **Hydro** will contract with **Manitoba** to provide job placement and referral services for employment on the **Keeyask Project**. Each **Keeyask Cree Nation**, or a **KCN Business** designated by it, subject to it first negotiating a referral agency agreement with **Manitoba**, will be the referral agency for its **Members** to **Manitoba** with respect to employment on the **Keeyask Project**. As vacancies and new positions become available, the **Keeyask Cree Nation**, or its designated **KCN Business**, will refer job-qualified **Members**, who are ready, willing and able to fill these positions, to **Manitoba**.

Referral to Include Preference

12.3.2 **Hydro's** contract with **Manitoba** described in subsection 12.3.1 requires **Manitoba**, among other things, to:

- (a) develop and provide information on job opportunities and registration and referral processes to the public, job seekers, employers, unions and third party deliverers, utilizing telephone, in-person, email, fax, internet, newspapers and radio;
- (b) develop and provide registration and associated documents;
- (c) assist job seekers to complete registration and associated documents;
- (d) verify that job seekers registration information is true and complete based on information received in conjunction with that declared by the job seeker;

- (e) advise job seekers that registration materials are complete and that the job seeker has been registered;
- (f) work with employers to create and take job orders;
- (g) randomly select qualified candidates related to a job order, within each preference tier as defined in the **BNA** and forward a list of those qualified candidates to the employer with instructions to contact, hire and reject candidates in the order they appear until the number of positions of the job order are filled or the list of candidates is exhausted;
- (h) ensure that the employer informs **Manitoba** which candidate is hired and the reasons for rejection for each candidate that is not hired;
- (i) implement clause 12.4.2 (e) of this **JKDA**; and
- (j) enter into negotiations for a contract on commercially reasonable terms with each **Keeyask Cree Nation**, or **KCN Business** designated by it for such purpose, to be the referral agency for its **Members** to **Manitoba** with respect to employment on the **Keeyask Project**.

12.4 TENDER SPECIFICATIONS

Tender Specifications

12.4.1 **Hydro**, as the **Project Manager**, will have the control and responsibility for the preparation of all of the tender specifications for the construction, operation and maintenance of the **Keeyask Project**. For those tender specifications with employment or training components, **Hydro** agrees to:

- (a) provide the proposed employment and training provisions of such tender specifications to the **Keeyask Cree Nations** for their review when they become available; and
- (b) as the schedule for the issuance of such tender specifications permits, receive and consider accommodating any comments the **Keeyask Cree Nations** may have with respect thereto.

Agreed Conditions

12.4.2 **Hydro**, as the **Project Manager**, agrees to include the following conditions in the tender specifications for contracts on the **Keeyask Project**, other than for contracts relating primarily to the supply of goods:

- (a) the **BNA** will form part of the tender specifications;
- (b) contractors will be required to set reasonable requirements for accreditation, skill and experience necessary for the particular work to be performed;
- (c) designated contractors will be required to provide on-the-job training to workers in specified trades and will be required to submit the detail of their on-the-job training program in their tender submission;
- (d) contractors will be required, if requested, to designate an individual to represent the contractor on the **Advisory Group on Employment**; and
- (e) job orders for on-the-job trainees or apprentices will be restricted to northern Aboriginals residing in the **Churchill/Burntwood/Nelson River Area**, with first preference for such jobs being given to individuals who have received designated trades or technical skills training pursuant to the **Training Initiative**. If a job order for an on-the-job trainee or apprentice cannot be filled by a northern Aboriginal resident in the **Churchill/Burntwood/Nelson River Area**, then **Manitoba** will consult the contractor placing the job order as to whether the contractor wishes the job order to continue in accordance with the provisions of the **BNA**, or whether the contractor prefers the job order to be cancelled.

12.5 **ADVISORY GROUP ON EMPLOYMENT**

Advisory Group on Employment

12.5.1 **Hydro**, as the **Project Manager**, agrees to establish the **Advisory Group on Employment** as soon as practical following the **Construction Start** to provide a forum for addressing employment related issues, in particular Aboriginal employment, in accordance with the **AGE Terms of Reference** attached hereto as Schedule 12-7.

Bulletin Board

12.5.2 **Hydro**, as the **Project Manager**, agrees to provide bulletin board space for the contractor under the **Employment Retention Contract** and for Aboriginal employees at or near the same location that bulletin board space is provided to the **Allied Hydro Council**, subject to the right of the **Project Manager** to remove objectionable items posted to such bulletin boards as the **Project Manager** deems appropriate.

12.6 CONSTRUCTION EMPLOYMENT

Mechanisms to Enhance Construction Employment

12.6.1 The **Training Initiative** described in section 12.1, the **BNA** provisions and the **Proposed Letter of Agreement** described in section 12.2, the job placement and referral provisions described in section 12.3, the special tender conditions described in section 12.4, the **Advisory Group on Employment** described in section 12.5, the commitments regarding business opportunities during construction of the **Keeyask Project**, including the **Employment Retention Contract** and the **Direct Negotiation Contracts** described in Article 13, and the transition funding described in section 17.1 and implementation funding described in section 17.2, are all mechanisms aimed at increasing the numbers of **Members** employed in the construction of the **Keeyask Project** and achieving the construction employment target set out in subsection 12.6.2.

Construction Employment Target

12.6.2 A total of six hundred and thirty (630) person-years of employment is a target agreed upon by the **Parties** for the employment of **Members** of the **Keeyask Cree Nations** on the **Keeyask Project**.

Measurement of Employment

12.6.3 The **Limited Partnership** shall measure whether the target set forth in subsection 12.6.2 has been met and shall share the results of such measurement with the **Keeyask Cree Nations** and with **Hydro**. The **Parties** agree that for the purposes of measuring whether the target set forth in subsection 12.6.2 has been met:

- (a) employment of **Members** in jobs related to the **Keeyask Project** commencing after the **Date of this JKDA** and prior to the **Final Completion Date** will be counted as employment on the **Keeyask Project** including jobs:
 - (i) with any contractor, sub-contractor or material or equipment supplier on, or in relation to, the **Keeyask Project**;
 - (ii) on **Direct Negotiation Contracts**;
 - (iii) with the **Project Manager**;
 - (iv) with **Hydro** in a capacity other than as **Project Manager**, excluding **Operational Jobs**; and,
 - (v) funded by transition funding described in section 17.1 or implementation funding described in section 17.2;

- (b) with respect to any job:
 - (i) under a **Direct Negotiation Contract**; or
 - (ii) of the type referenced in clause 12.6.3 (a), other than a job under a **Direct Negotiation Contract**, where the request for employment by the job placement and referral services contractor was for a duration of thirty (30) days or greater;

each **Member** employed in any such job for one (1) day or more, but thirty (30) days or less, in each consecutive thirty (30) day period, will be considered to have been employed for a month, and each such month of employment shall count towards the calculation of a person-year of employment;

- (c) with respect to any job of the type referenced in clause 12.6.3 (a), other than a job under a **Direct Negotiation Contract**, where the request for employment by the job placement and referral services contractor was for a duration of less than thirty (30) days, each **Member** employed in any such job for one (1) day or more, but fifteen (15) days or less, in each consecutive fifteen (15) day period, will be considered to have been employed for one half (1/2) of one (1) month, and any two (2) of such half (1/2) months shall count as one (1) month of employment towards the calculation of a person-year of employment; and
- (d) one (1) person-year of employment on the **Keeyask Project** shall be calculated as any twelve (12) individual months of employment by one (1) or more **Members** in accordance with clauses 12.6.3(b) and (c), regardless of whether such months of employment by such **Member** are consecutive or not and are in the same job or in different jobs.

Enhancements to Operational Jobs Efforts if Target Not Met

12.6.4 If on the **Final Closing Date** it is determined that the employment target of six hundred and thirty (630) person-years of employment for **Members** of the **Keeyask Cree Nations** on the **Keeyask Project** has not been met for any reason, the **Parties** agree that the **Limited Partnership** will contribute up to an additional three million (\$3,000,000) dollars, adjusted for inflation by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2007 as the base year, of funding for the **Working Groups on Operational Jobs** pursuant to subsection 12.7.5 of this **JKDA**, determined on the following basis:

- (a) if the employment of **Members** is greater than four hundred and ninety-nine (499) person-years of employment but less than six hundred and thirty (630) person-years, then the amount to be contributed will be one million (\$1,000,000) dollars;

- (b) if the employment of **Members** is greater than three hundred ninety-nine (399) person-years of employment but less than five hundred (500) person-years, then the amount to be contributed will be two million (\$2,000,000) dollars; and
- (c) if the employment of **Members** is less than four hundred (400) person-years of employment, then the amount to be contributed will be three million (\$3,000,000) dollars.

No Attribution of Fault

12.6.5 The **Parties** acknowledge that there are many factors which potentially could contribute to the employment target set out in subsection 12.6.2 not being achieved, some not within the control of the **Limited Partnership** or **Hydro**, some not within the control of the **Keeyask Cree Nations** and some not within the control of any of the **Parties**. As a result, the determination for the purposes of subsection 12.6.4 as to whether the target has been met is to be made without attribution of fault to any of the **Parties**. Without limiting the generality of the foregoing, a contribution of funds by the **Limited Partnership** pursuant to subsection 12.6.4, if any, shall not be, nor shall it be considered to be, an attribution of fault to the **Limited Partnership**, or an admission of fault by the **Limited Partnership**.

12.7 EMPLOYMENT IN OPERATIONAL JOBS

Operational Job Targets

12.7.1 As a mechanism to increase the numbers of **Members** employed in **Hydro's** ongoing operations, the **Keeyask Cree Nations** and **Hydro** have agreed to a twenty (20) year target from the **Date of this JKDA** for the employment of **Members** in **Operational Jobs**, of approximately one hundred (100) **TCN Members**, ten (10) **War Lake Members** and thirty-six (36) **Members** for each of **York Factory** and **Fox Lake**. In working towards the foregoing targets for **Operational Jobs**, **Hydro** undertakes, to the extent possible, to have the proportion of term employment positions for **Members** that are considered **Operational Jobs** reflect the proportion of term employment positions to overall employment positions at **Hydro**.

Review and Adjustment of Targets

12.7.2 Within the twenty (20) year time frame identified in subsection 12.7.1, **Hydro** and the **Keeyask Cree Nations** will work together, through the **Working Group on Operational Jobs** as provided in subsection 12.7.3, to review and if mutually agreed, adjust, the targets in respect of **Operational Jobs** set forth in subsection 12.7.1. This review will include utilizing information available with respect to **Hydro** forecasts of its employment requirements over this time frame and the **Keeyask Cree Nations** available supply of labour.

Working Group on Operational Jobs

12.7.3 The **Parties** agree to establish a **Working Group on Operational Jobs** not later than the **Date of this JKDA**. The **Working Group on Operational Jobs** will work jointly and collaboratively to design and implement a successful employment framework, having regard to the matters set forth in the draft employment framework attached hereto as Schedule 12-8. Upon notice to the other parties, **Hydro** may meet bilaterally with any of **CNP, York Factory and Fox Lake** from time to time, to discuss matters of specific interest to each community.

Five (5) Year Work Plans

12.7.4 The **Working Group on Operational Jobs** will prepare a five (5) year work plan setting out the objectives of the working group for the ensuing five (5) year period and the activities and, where applicable, measurements to be undertaken by the working group during such period. In the last year of such work plan, the working group will review the work of the working group against the work plan and will prepare a subsequent five (5) year work plan, and so on for the twenty (20) year time frame identified in subsection 12.7.1.

Reimbursement of Reasonable Costs

12.7.5 As long as a **Keeyask Cree Nation** is participating actively in the **Working Group on Operational Jobs**, **Hydro** will reimburse the reasonable costs of each **Keeyask Cree Nation** in participating in the **Working Group on Operational Jobs** and undertaking activities in connection therewith during such twenty-year period, up to an aggregate maximum annual amount for all of the **Keeyask Cree Nations** of nine hundred thousand (\$900,000) dollars, in accordance with the terms of the **Reimbursement Policy** and subject to **Hydro** first approving a work plan and budget from a **Keeyask Cree Nation** prior to any such costs being incurred by it. Such maximum annual reimbursement amount:

- (a) will be allocated among the **Keeyask Cree Nations** generally based on each **Keeyask Cree Nation's Proportionate Share**;
- (b) will be adjusted annually for inflation, commencing in the year 2009, by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2007 as the base year; and
- (c) will form part of the **Pre-Closing Liabilities**, and, after the **Initial Closing Date**, will be paid by the **Limited Partnership**.

Notice of Termination

12.7.6 Until **Hydro** has given a **Keeyask Cree Nation** thirty (30) days notice of its intention not to reimburse reasonable costs for the reasons set forth in subsection 12.7.5, **Hydro** will honour its commitment to reimburse reasonable costs, and reasonable costs incurred by a

Keeyask Cree Nation prior to any such notice and during the thirty (30) day notice period will be paid in accordance with the provisions of this section 12.7.

ARTICLE 13

BUSINESS OPPORTUNITIES

13.1 IMPLEMENTATION FRAMEWORK

Purpose

13.1.1 Article 13 and Schedules 13-1 to 13-3 set out the ways and means by which **Hydro** will make business opportunities available to the **Keeyask Cree Nations** to take advantage of economic benefits potentially attainable from the **Keeyask Project**.

Construction Agreement

13.1.2 Under the **Construction Agreement**, the **Limited Partnership** will contract with **Hydro** to act as **Project Manager** to complete the planning, design and engineering and to construct and commission the **Keeyask Project**.

Construction Phase

13.1.3 Business opportunities available for **Direct Negotiation** by the **Keeyask Cree Nations** or **KCN Businesses** will occur while the **Keeyask Project** is being constructed. **Hydro** in its capacity as **Project Manager** will construct the **Keeyask Project**:

- (a) through the work of **Hydro**, directly or indirectly;
- (b) by means of contracts entered into by **Hydro** through processes that will involve:
 - (i) **Direct Negotiations**;
 - (ii) **Open Competitive Tenders**; and
 - (iii) other means that **Hydro** determines are necessary in the circumstances.

Agreed Objective

13.1.4 The **Parties** understand the **Keeyask Project** provides opportunities to expand the number, capacity, diversity and viability of **KCN Businesses**. Realizing these potential opportunities is an agreed objective of the **Limited Partnership**, and the **Parties** agree that the framework, commitments, processes and remedies set out in this Article 13 and in Schedules

13-1 to 13-3 were designed, by mutual agreement of the **Parties**, to achieve such objective, subject to adhering to the principles set out in subsection 13.1.5.

Risk Management

13.1.5 The **Parties** understand that managing risks during construction of the **Keeyask Project** is essential for the **Limited Partnership** to be economic. The management of risk related to a **Direct Negotiation Contract** requires reasonable assurance of the demonstrated capacity of a **Proposer** to successfully perform the **Work** prior to such contract being awarded. Consequently, any **Direct Negotiations** will be conducted by **Hydro**, as the **Project Manager**, such that the ability of the **Proposer** to deliver goods or services, to attain schedules and to achieve costs and quality acceptable to **Hydro** will be the primary factors considered in all preferential purchase decisions.

Employment Preference on Direct Negotiation Contracts for Members

13.1.6 Prior to the hiring of any other **Northern Aboriginal**, each **Keeyask Cree Nation** covenants with the other **Keeyask Cree Nations** to require any **Proposer** under its control, or under their joint control, and contracted to perform a **Direct Negotiation Contract**, to:

- (a) give first preference in hiring under such contract to **Members** of the **Keeyask Cree Nation(s)** it represents, provided such **Members** are registered with **Manitoba** and are **Northern Aboriginals**, or are deemed to be **Northern Aboriginals** under the **BNA**; and
- (b) give second preference in hiring under any such contract to qualified **Members** of the remaining **Keeyask Cree Nation(s)**, provided such **Members** are registered with **Manitoba** and are **Northern Aboriginals**, or are deemed to be **Northern Aboriginals** under the **BNA**.

Hydro to Provide Hiring Information

13.1.7 **Hydro** will collect employment hiring information in relation to each **Direct Negotiation Contract** and will provide such information in a quarterly report to the **Keeyask Cree Nations**.

No Obligation on Hydro or Limited Partnership to Enforce

13.1.8 Apart from the information to be provided pursuant to subsection 13.1.7, neither **Hydro** nor the **Limited Partnership** will have any obligation, directly or indirectly, to enforce subsection 13.1.6 or otherwise ensure that subsection 13.1.6 is complied with or fulfilled in respect of any **Direct Negotiation Contract**.

Application of BNA

13.1.9 The **BNA** will apply, in accordance with its terms, to all **Direct Negotiation Contracts** awarded to a **Proposer**, provided that if the **BNA** is not triggered for the **Keeyask Project** as provided in subsection 2.1 of the **BNA**, any collective labour agreement governing the **Keeyask Project** in place of the **BNA** shall apply, as of its effective date, to all **Direct Negotiation Contracts** awarded to a **Proposer**.

13.2 IDENTIFICATION AND SHARING OF WORK PACKAGES

Identified Work Packages

13.2.1 It is **Hydro's** intention that the **Identified Work Packages** will be available for **Direct Negotiation** to a **Keeyask Cree Nation** or a **KCN Business** designated by a **Keeyask Cree Nation** for that purpose, in the manner set forth in this Article 13. However, **Hydro** may make additions or deletions to, or scope changes in, such **Identified Work Packages** between the **Date of this JKDA** and construction of the **Keeyask Project**. In that regard, **Hydro** agrees:

- (a) that notwithstanding the right of **Hydro** to remove work packages from Schedule 13-1, or to reduce their scope, the **Keeyask Cree Nations** will have the opportunity to participate in **Direct Negotiations** in the manner set forth in this Article 13 for a minimum aggregate dollar value of work packages of:
 - (i) two hundred and three million, one hundred thousand (\$203,100,000) dollars; and
 - (ii) the value of the Provincial Road 280 upgrades from the Provincial Road 391 intersection to the **Keeyask Project** intersection at kilometre 174, provided that such work has not otherwise been completed and that it continues to be a contract under the direction and control of **Hydro**;

which amount shall be escalated from July, 2007 until the commencement of negotiation of the last **Identified Work Package** at **Hydro's** "Hydro-Electric Project Composite Escalation Rate" set out in its corporate policy G-911 – Project Escalation, Interest, Exchange and Hurdle Rates, or its equivalent, in effect from time to time; and,

- (b) without limiting the generality of clause (a) above, not to remove work packages from Schedule 13-1, or to reduce their scope, unless necessary as a result of changes to the **Keeyask Project**.

Supplemental Work Packages

13.2.2 In addition to the **Identified Work Packages**, as the planning for the **Keeyask Project** progresses, where reasonable, **Hydro** will continue to assess the feasibility of further work packages, including any that may arise pursuant to sub-clauses 13.1.3 (b) (i) and (iii), considering in particular any increased capabilities of **KCN Businesses** to successfully undertake the required work, so as to attempt to make additional work packages available to a **Keeyask Cree Nation** or a **KCN Business** for **Direct Negotiation** in the manner set forth in this Article 13.

Principles Related to the Sharing of Work Packages

13.2.3 The **Parties** will adhere to the following principles in dealing with work packages available for **Direct Negotiation** pursuant to this Article 13:

- (a) **Identified Work Packages** available for **Direct Negotiation** will be apportioned amongst the **Keeyask Cree Nations**, to the extent practically possible, based upon a percentage share of the total estimated dollar value for the **Identified Work Packages** as at July, 2007, as shown in Schedule 13-1, as follows:
 - (i) **CNP** - sixty (60%) per cent
 - (ii) **Fox Lake** - twenty (20%) per cent
 - (iii) **York Factory** - twenty (20%) per cent;
- (b) based upon the principle set forth in clause (a) above, the allocation of the **Identified Work Packages** among the **Keeyask Cree Nations** will be as set forth in Schedule 13-1. The allocation in Schedule 13-1 will not be changed in the event of a variance, whether nominal or significant, between the estimated dollar value of any such work package as at the date the allocation was agreed to by the **Keeyask Cree Nations** in July, 2007 and the price that ultimately may be negotiated in a contract with **Hydro** in respect of such work package;
- (c) in the event of a variance between estimated and actual contract values as described in clause (b) above, restoring the 60:20:20 apportionment will be one of a number of considerations by **Hydro** in negotiating a supplemental work package, if any, as contemplated by subsection 13.2.2;
- (d) if a contract in respect of any **Identified Work Package** is not successfully negotiated with a **Keeyask Cree Nation** or **KCN Business** following the **Proposal Review Process**, then restoring the 60:20:20 apportionment will be one of a number of considerations by **Hydro** in negotiating any such **Identified Work Package** as contemplated by subsection 13.3.4;

- (e) neither **Hydro** nor the **Keeyask Cree Nations** can anticipate or control a variety of factors that will impact the apportionment of **Identified Work Packages** set out in clause 13.2.3 (a), including revisions to cost estimates, required additions or deletions or scope changes to Schedule 13-1 as a result of progression of the **Keeyask Project**, or failure of a **Keeyask Cree Nation** or **KCN Business** to successfully negotiate a **Direct Negotiation Contract** with **Hydro**, and therefore there is a possibility that the 60:20:20 apportionment will not be achieved.

No Award of Employment Retention Contract Through Open Competitive Tendering

13.2.4 If **Hydro** and **York Factory** and **Fox Lake** are unable to successfully negotiate an **Employment Retention Contract**, then **Hydro** will not award a contract for such work package to any other party using **Open Competitive Tendering**, but rather will perform the scope of work under such contract on its own behalf, unless the **Parties** otherwise agree.

York Factory and Fox Lake Working Together on Some Work Packages

13.2.5 It is understood that one (1) or more **Identified Work Packages** has been allocated jointly to **York Factory** and **Fox Lake** and that as a result one (1) or more **Direct Negotiation Contracts** may be awarded to **York Factory** and **Fox Lake**, and undertaken by them, by way of a single joint venture or single **KCN Business**.

13.3 DIRECT NEGOTIATION PROCESS

Application

13.3.1 The process for **Direct Negotiation** set out in this section 13.3 will apply to **Identified Work Packages** set out in Schedule 13-1 and supplemental work packages, if any referred to in subsection 13.2.2.

Request for Direct Negotiation Proposals

13.3.2 **Hydro** will issue a **Request for Direct Negotiation Proposal**:

- (a) in respect of each **Identified Work Package**, to each **Keeyask Cree Nation** to whom it was allocated in Schedule 13-1 or to the **KCN Business** designated by it for that purpose; and
- (b) in respect of any supplemental work package referred to in subsection 13.2.2, to each **Keeyask Cree Nation** which, in the opinion of **Hydro**, acting reasonably, and having regard to the principles set out in subsection 13.2.3, is most likely to have the capacity to perform the work.

Direct Negotiation Process

13.3.3 **Hydro** will endeavour to negotiate a **Direct Negotiation Contract** in respect of each work package for which it has issued a **Request for Direct Negotiation Proposal** following the stages and criteria set out in the **Proposal Review Process** set out in Schedule 13-2, comprised of the following stages:

- (a) Stage 1 - Initial Review
- (b) Stage 2 - Pre-Qualification of Business Structure;
- (c) Stage 3 - Submission and Evaluation of **Proposal**; and
- (d) Stage 4 - Negotiation of **Direct Negotiation Contract**.

Contracting With Other Keeyask Cree Nations

13.3.4 Where **Hydro** and a **Keeyask Cree Nation** or designated **KCN Business** are unable to successfully negotiate a **Direct Negotiation Contract** in respect of an **Identified Work Package** following the **Proposal Review Process**, and subject to there being sufficient time in the construction schedule for the **Keeyask Project**, then **Hydro** will issue a **Request for Direct Negotiation Proposal** in respect of such **Identified Work Package** to one of the other **Keeyask Cree Nations** which, in the opinion of **Hydro**, acting reasonably, and having regard to the principles set out in subsection 13.2.3, is most likely to have the capacity to perform the work.

Process for Contracting with Other Keeyask Cree Nations

13.3.5 **Hydro** will endeavour to negotiate a **Direct Negotiation Contract** in respect of an **Identified Work Package** arising from subsection 13.3.4 with each **Keeyask Cree Nation** or **KCN Business** designated for such purpose, following the stages and criteria set out in the **Proposal Review Process**. If **Hydro** and each such **Keeyask Cree Nation** or designated **KCN Business** are unable to successfully negotiate a **Direct Negotiation Contract** in respect of the **Identified Work Package** in question, then **Hydro** shall be entitled to proceed to award a contract for such **Identified Work Package** in accordance with subsection 13.4.1.

Cooperative Processes

13.3.6 In working with each identified **Keeyask Cree Nation** for a particular **Identified Work Package**, **Hydro** will use cooperative processes for **Direct Negotiation** of a **Direct Negotiation Contract**, tailored to specific work packages, as provided for in the **Proposal Review Process**.

13.4 PUBLIC TENDERING

Recourse to Open Competitive Tendering or Other Means

13.4.1 Except for the **Employment Retention Contract**, where a **Direct Negotiation Contract** in respect of any **Identified Work Package** cannot be successfully negotiated with a **Keeyask Cree Nation** or designated **KCN Business** pursuant to subsection 13.3.3 or subsection 13.3.5, if applicable, then **Hydro** may award a contract or contracts in respect of that work using **Open Competitive Tendering** or by other means that **Hydro**, acting reasonably, may deem necessary in the circumstances.

Limitations on Bidding

13.4.2 The **Parties** agree that, unless **Hydro** otherwise determines:

- (a) the **Keeyask Cree Nations**;
- (b) **KCN Businesses**; and
- (c) businesses, corporations or entities that, directly or indirectly, are, or may be perceived to be, privy to **Insider Information**;

will be precluded from bidding or proposing, directly or indirectly, in any **Open Competitive Tendering** to do any work related to the planning or construction of any portion of the **Keeyask Project**.

Permitted Bidding

13.4.3 Nothing in subsection 13.4.2 is intended to preclude or does preclude:

- (a) a **Keeyask Cree Nation** or **KCN Business** from performing work under a **Direct Negotiation Contract**; or
- (b) corporations or businesses which are owned by **Members** of one or more of the **Keeyask Cree Nations** and which are not and which would not be perceived to be, directly or indirectly, privy to **Insider Information**, from bidding or proposing for work in any **Open Competitive Tendering**; or
- (c) the supply of non-tendered goods, supplies and services by a **Keeyask Cree Nation** or **KCN Business**.

Promotion of Northern Aboriginal Business Participation

13.4.4 In order to promote **Northern Aboriginal Contractor** participation in work on the **Keeyask Project, Hydro** will:

- (a) waive bid and/or performance bonding on **Identified Work Packages** to the extent identified in the attached Schedule 13-3;
- (b) provide in its tender specifications that consideration will be given to contractors sub-contracting with **Northern Aboriginal Contractors** for the provision of goods and services, in a manner that in the opinion of **Hydro** does not have a material negative impact on the quality of goods or services, attainment of schedules and achievement of acceptable costs;
- (c) establish a bid depository mechanism to permit **Keeyask Cree Nations** or **KCN Businesses** to submit sub-contract bids for consideration and pick-up by contractors in **Open Competitive Tendering**, in accordance with the following principles:
 - (i) **Keeyask Cree Nations** or **KCN Businesses** shall be prohibited from engaging in discussions or communications with any contractor in relation to a proposed or actual sub-contract bid to be submitted for consideration in the bid depository;
 - (ii) any bid submitted to the bid depository shall be available for public review;
 - (iii) whether a contractor proposing to bid, or in fact bidding, in **Open Competitive Tendering** decides to pick up a bid from the bid depository shall be in such contractor's sole discretion and such contractor will not be directed or obligated to do so; and
 - (iv) time frames shall be established by **Hydro** in the **Open Competitive Tendering** document with respect to deadlines to submit bids to the bid depository in order to have such bids considered by contractors in **Open Competitive Tendering**; and
- (d) within ten (10) days of an award of a contract through **Open Competitive Tendering** or by other means, provide the successful contractor with a list of **Keeyask Cree Nations** and **KCN Businesses** available to do sub-contract work.

13.5 DISPUTE RESOLUTION

Provision for Mediation

13.5.1 If **Hydro** advises that it does not accept the **Proposer's Proposal** in accordance with the **Proposal Review Process**, the **Keeyask Cree Nation** under whose jurisdiction the **Proposer** falls has the right to request non-binding mediation in the manner provided in subsection 13.5.2, exercisable:

- (a) within ten (10) days of **Hydro's** written notice that it does not accept the **Proposer's Proposal**; and
- (b) on one occasion only in respect of that **Proposal**, in either Stage 3 or Stage 4 of the **Proposal Review Process**.

Mediation Process

13.5.2 If the affected **Keeyask Cree Nation** requests non-binding mediation in compliance with the **Proposal Review Process**, then:

- (a) the mediator appointed will have a background in large civil project construction and may be rejected by the parties only for bias;
- (b) **Hydro** and the affected **Keeyask Cree Nation** will appoint a mediator within twenty (20) days of such request to work with them to resolve their differences. If **Hydro** and the affected **Keeyask Cree Nation** are unable to agree on the appointment of a mediator, either of them, within a further ten (10) days from the conclusion of the twenty (20) day period may make application to a Justice of the Court of Queen's Bench (Winnipeg Division) to appoint a person to act as mediator from a list of persons submitted by the affected **Keeyask Cree Nation** and **Hydro**, or if only one of them submits a list, from the list submitted by that party;
- (c) the mediator will have thirty (30) days from the time of his or her appointment to meet with the parties and help them resolve their differences, unless the parties mutually agree to an extension of the deadline;
- (d) the parties agree to participate in good faith in the mediation and the negotiations related thereto for such thirty (30) day period or any mutually-agreed extension; and
- (e) the costs of the mediator, including fees and expenses, shall be borne by the **Limited Partnership** and each party shall bear its own costs and expenses of the mediation.

Termination of Mediation Right

13.5.3 If the affected **Keeyask Cree Nation**:

- (a) fails to make a request for non-binding mediation within the time period specified in the **Proposal Review Process**; or
- (b) fails to work with **Hydro** to appoint a mediator or to make application to the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) within the time period specified in subsection 13.5.2,

then **Hydro's** decision will be final and binding with respect to the **Work** in question and negotiations with the **Proposer** for such **Work** shall be deemed to be concluded, but this shall not limit the rights of a **Keeyask Cree Nation** provided for in subsection 13.5.7.

Provision for Referral to Principals

13.5.4 If **Hydro** advises following mediation, if any, that it still does not accept the **Proposer's Proposal** to perform the **Work**, as the same may have been revised during the mediation period, then within five (5) days of **Hydro's** written notice to such effect, the **Keeyask Cree Nation** under whose jurisdiction the **Proposer** falls, has the right to request that the remaining differences between **Hydro** and the **Proposer** be submitted to the President and CEO of **Hydro** and the Chief of the affected **Keeyask Cree Nation**.

Referral to Principals Process

13.5.5 If the affected **Keeyask Cree Nation** requests a referral to the President and CEO of **Hydro** and the Chief of the affected **Keeyask Cree Nation** in compliance with the **Proposal Review Process**, then each of **Hydro** and the affected **Keeyask Cree Nation** will prepare within fifteen (15) days of such request, a written statement of facts and detailed summary of remaining differences in respect of the **Work** in question and submit same to the President and CEO of **Hydro** and the Chief of the affected **Keeyask Cree Nation**. If such principals of the parties cannot resolve the dispute within forty-five (45) days of the submission of the written statements by **Hydro** and the affected **Keeyask Cree Nation**, or any mutually-agreed extension, then **Hydro's** decision will be final and binding with respect to the **Work** in question. Negotiations with the **Proposer** for such **Work** shall be deemed to be concluded, but this shall not limit the rights of a **Keeyask Cree Nation** provided for in subsection 13.5.7.

Termination of Referral to Principals

13.5.6 If the affected **Keeyask Cree Nation**:

- (a) fails to make a request for a referral to the President and CEO of **Hydro** and the Chief of the affected **Keeyask Cree Nation** within the time period specified in the **Proposal Review Process**; or

- (b) fails to prepare or submit a written statement of facts and detailed summary of remaining differences in respect of the **Work** in question within the time period specified in subsection 13.5.5;

then **Hydro's** decision shall be final and binding with respect to the **Work** in question and negotiations with the **Proposer** for such **Work** shall be deemed concluded.

Arbitration

13.5.7 If **Hydro** rejects a **Proposer** or its **Proposal** at any stage of the **Proposal Review Process**, an affected **Keeyask Cree Nation**, within ninety (90) days of such rejection, may cause an **Arbitrator** to be appointed, in the manner provided in Article 19, to determine the matters set forth in subsection 13.5.8.

Arbitrator's Determination

13.5.8 An arbitration pursuant to subsection 13.5.7 shall be solely for the purposes of determining, on a balance of probabilities, based on all of the facts and circumstances:

- (a) whether, in rejecting the **Proposer** or the **Proposal**, **Hydro** complied with the **Proposal Review Process** set out in Schedule 13-2;
- (b) whether, in rejecting the **Proposer** or the **Proposal**, **Hydro** acted reasonably, having regard to the tender specifications, including the evaluation criteria, for the **Work**; and
- (c) if the **Arbitrator** finds against **Hydro** pursuant to clauses (a) or (b), above, the damages, if any, suffered by the **Proposer**, based upon satisfactory supporting evidence and after receiving oral and/or written submissions of **Hydro** and the **Proposer** with respect thereto.

Decision Final and Binding

13.5.9 The decision of the **Arbitrator** shall be final and binding on **Hydro**, the applicable **Keeyask Cree Nation** and the **Proposer**. Notwithstanding anything in Article 19 to the contrary, the **Arbitrator** shall have no jurisdiction or authority to set aside or vary in any way the contract awarded by **Hydro** through **Open Competitive Tendering** or by other means or to direct **Hydro** to award a contract in respect of that or any other work package to the applicable **Keeyask Cree Nation** or **Proposer**.

ARTICLE 14

KCN INVESTMENT ENTITIES

14.1 KCN INVESTMENT ENTITIES

Consent

14.1.1 **Hydro** agrees to the use by a **Keeyask Cree Nation** of its **KCN Investment Entity** for the purposes of investing in the **Limited Partnership**, subject to the **Keeyask Cree Nation** providing evidence satisfactory to **Hydro** that the **Keeyask Cree Nation** is the sole legal and beneficial owner of its **KCN Investment Entity**.

Restriction on Business of KCN Investment Entity

14.1.2 Each **Keeyask Cree Nation** agrees with **Hydro** that it will not, without the prior written consent of **Hydro**, use its **KCN Investment Entity** to carry on any business activity other than to invest in the **Limited Partnership** and will cause its **KCN Investment Entity** to carry out its obligations in connection therewith and as contemplated by this **JKDA** and to invest passively its cash on hand in securities or money market instruments.

Restriction on Transfers, Encumbrances

14.1.3 For so long as its **KCN Investment Entity** owns **Units** in the **Limited Partnership**, each **Keeyask Cree Nation** agrees with **Hydro** that it will not sell, transfer, assign, encumber or pledge as collateral (except for an encumbrance or pledge to **Hydro**) or dispose of in any way, directly or indirectly, its legal or beneficial interest in its **KCN Investment Entity**, or in any rights thereunder, including distributions, and will not suffer or permit or cause the ownership interest in its **KCN Investment Entity** to be registered in the name of any other person, firm or entity, without the prior written consent of **Hydro**.

Notice of Restriction

14.1.4 Each **Keeyask Cree Nation** agrees with **Hydro** that it will place or cause to be placed notice of the restriction on transfer of its securities issued or to be issued by its **KCN Investment Entity** on the certificates evidencing such securities and that it will ensure that its **KCN Investment Entity** will not authorize, nor will its **KCN Investment Entity** record or permit or suffer to be recorded any transfer of its securities or any rights thereunder, including distributions, on its books and ledgers except in accordance with this Article.

Prohibition against Issue of Additional Securities in KCN Investment Entity

14.1.5 For so long as its **KCN Investment Entity** owns **Units** in the **Limited Partnership**, each **Keeyask Cree Nation** agrees with **Hydro** that except for the securities issued or to be issued to the **Keeyask Cree Nation**, it will not permit the issue of any additional

securities in its **KCN Investment Entity** to any person, firm, corporation, band (within the meaning of the *Indian Act* (Canada)) or other entity, other than the **Keeyask Cree Nation**, without the prior written consent of **Hydro**.

Commitment to Maintain Legal Existence

14.1.6 For so long as its **KCN Investment Entity** owns **Units** in the **Limited Partnership**, each **Keeyask Cree Nation** agrees with **Hydro** that it will, as the sole legal and beneficial owner of its **KCN Investment Entity**, take all such steps as are required to maintain the legal existence of its **KCN Investment Entity** and ensure that at all times there is a duly elected board of directors of its **KCN Investment Entity**, or of the general partner of its **KCN Investment Entity**, as the case may be.

14.2 USE OF DISTRIBUTIONS

Restriction on Use

14.2.1 Each **Keeyask Cree Nation** agrees, and will cause its **KCN Investment Entity** to agree that, other than payments:

- (a) to a lender contemplated by subsection 5.5.3 and section 5.6 of this **JKDA**; or
- (b) for the reasonable expenses, including salaries and honouraria, of its **KCN Investment Entity** in carrying on its business in accordance with subsection 14.1.2 of this **JKDA**;

the distributions from the **Limited Partnership** received by a **KCN Investment Entity** will either be retained by the **KCN Investment Entity** and managed by it in accordance with subsection 14.1.2, or be distributed to the applicable **Keeyask Cree Nation** as the beneficial owner of the **KCN Investment Entity**, and that the use of such distributions by such **Keeyask Cree Nation** will be restricted in the manner provided in this section 14.2.

Permitted Uses

14.2.2 Distributions referred to in subsection 14.2.1 may be used by a **Keeyask Cree Nation** for the following purposes:

- (a) resource rehabilitation and development measures to support increased viability for traditional and commercial resource pursuits and other resource harvesting;
- (b) initiatives to support its Aboriginal or treaty rights;
- (c) cultural support and social development initiatives;

- (d) business and employment development undertakings;
- (e) local community infrastructure and housing development;
- (f) the construction of capital projects, including related infrastructure, as well as the operation and maintenance of any capital projects, including related infrastructure; and
- (g) technical and legal services related to its business and other affairs.

Community Approval Processes

14.2.3 **Chief and Council** of each **Keeyask Cree Nation** will ensure that, for the information of its **Members**, there will be appropriate community consultation processes prior to using distributions referred to in subsection 14.2.1 for the purposes set out in subsection 14.2.2.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES

15.1 GENERAL REPRESENTATIONS AND WARRANTIES

General Representations and Warranties of Hydro

15.1.1 **Hydro** represents and warrants to each **Keeyask Cree Nation** as follows and acknowledges that each **Keeyask Cree Nation** is relying on such representations and warranties in entering into this **JKDA** and consummating the transactions contemplated by this **JKDA**:

- (a) **Hydro** is a corporation duly established by law and organized and validly subsisting under the laws of the Province of **Manitoba** and has the corporate power and authority to own or lease its property, to operate the **Integrated Power System** and to enter into this **JKDA** and to duly observe and perform all of its obligations hereunder, subject to the provisions of the **Hydro Act** described in Schedule 15-1;
- (b) this **JKDA** has been duly authorized, executed and delivered by **Hydro** and is a legal, valid and binding obligation of **Hydro** enforceable against **Hydro** by each **Keeyask Cree Nation** in accordance with its terms, except:
 - (i) as enforcement may be limited by the provisions of the **Hydro Act** described in Schedule 15-1;
 - (ii) as enforcement may be limited by bankruptcy, insolvency and other similar laws of general application affecting the rights of creditors generally; and
 - (iii) that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;
- (c) no person, firm or corporation (other than **Hydro**, the **General Partner** and the **Keeyask Cree Nations** in accordance with this **JKDA**) has or will have any written or oral agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option for:
 - (i) the development of the **Keeyask Project** or investment in the **Limited Partnership**; or
 - (ii) the purchase, subscription, allotment or issuance of any of the unissued **Units** or other securities of the **Limited Partnership**;

- (d) the execution and delivery of this **JKDA** by **Hydro** and, subject to obtaining all of the **Closing Licences** and all other licences, permits, orders, authorizations and approvals required for the development and operation of the **Keeyask Project**, the consummation of the transactions herein provided for by **Hydro**, will not result in 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, except for the potential acceleration of obligations under the agreements listed in Schedule 15-2,
 - (ii) any provision of the **Hydro Act**, by-laws of **Hydro** or resolutions of the board of directors (or any committee thereof), except for the provisions of the **Hydro Act** described in Schedule 15-1,
 - (iii) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over **Hydro**,
 - (iv) any licence, permit, approval, consent or authorization held by **Hydro**, or
 - (v) any applicable law, statute, ordinance, regulation or rule;
- (e) **Hydro**, to its knowledge, has complied and will comply with all laws, statutes, ordinances, regulations, rules, judgments, decrees or orders applicable to the **Keeyask Project** or to **Hydro** in relation to the **Keeyask Project**;
- (f) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the knowledge, information and belief (after due inquiry) of **Hydro**, threatened against or relating to **Hydro** which, if determined adversely to **Hydro**, might materially and adversely affect the power, capacity and authority of **Hydro** to enter into this **JKDA** and carry out the provisions hereof and perform its obligations hereunder and there is not against **Hydro** presently outstanding any such judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator; and
- (g) **Hydro** is a resident of Canada for the purposes of the *Income Tax Act* (Canada).

General Representations and Warranties of the Keeyask Cree Nations

15.1.2 Each **Keeyask Cree Nation** severally represents and warrants, on its own behalf, to **Hydro** as follows, and acknowledges that **Hydro** is relying on such representations and warranties in entering into this **JKDA** and consummating the transactions contemplated by this **JKDA**:

- (a) it is a “band” within the meaning of the *Indian Act* (Canada) and has the power:
 - (i) to own or lease its personal property and its beneficial interest in real property (other than its reserve lands);
 - (ii) to enter into this **JKDA**; and
 - (iii) to duly observe and perform all of its obligations hereunder;
- (b) this **JKDA** has been duly authorized, executed and delivered by it and is a legal, valid and binding obligation enforceable against it by **Hydro** in accordance with its terms, except:
 - (i) as enforcement may be limited by bankruptcy, insolvency and other similar laws of general application affecting the rights of creditors generally; and
 - (ii) that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;
- (c) no person, firm or corporation (other than **Hydro**, the **General Partner** and the **Keeyask Cree Nations** in accordance with this **JKDA**) has or will have any written or oral agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option for:
 - (i) the development of the **Keeyask Project** or investment in the **Limited Partnership**; or
 - (ii) the purchase, subscription, allotment or issuance of any of the unissued **Units** or other securities of the **Limited Partnership**;
- (d) its execution and delivery of this **JKDA** and the consummation by it of the transactions herein provided for will not result in the breach or violation of any other provisions of or constitute a default under or conflict with or cause the acceleration of any obligation under,
 - (i) any contract to which it is a party or by which it or any of its property, is bound;
 - (ii) any regulations, by-laws or resolutions of its **Chief and Council**;
 - (iii) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over it;

- (iv) any licence, permit, approval, consent or authorization held or issued by it or necessary to the investment by its **KCN Investment Entity** in the **Limited Partnership**; or
- (v) any applicable law, statute, ordinance, regulation or rule;
- (e) it, to its knowledge, has complied and will comply with all laws, statutes, ordinances, regulations, rules, judgments, decrees or orders applicable to it in relation to the **Keeyask Project**; and
- (f) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of its knowledge, information and belief (after due inquiry) threatened against or relating to it or its **Chief and Council** which, if determined adversely to it or its **Chief and Council**, might materially and adversely affect its power, capacity and authority to enter into this **JKDA** and carry out the provisions hereof and perform its obligations hereunder, and there is not against it presently outstanding any such judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator.

Survival of General Representations and Warranties of the Parties

15.1.3 The representations and warranties of the respective **Parties** contained in subsections 15.1.1 and 15.1.2 of this **JKDA** or any agreement, instrument, certificate or other document executed or delivered pursuant thereto (except as otherwise provided herein or therein) shall survive the nominal subscription for **Units** on the **Subscription Date**, the **Initial Closing** and the **Final Closing** and notwithstanding such closings, nor any investigation made by or on behalf of any **Party**, shall continue in full force and effect without limitation of time, subject only to applicable limitation periods imposed by law.

ARTICLE 16

INITIAL CLOSING CONDITIONS

16.1 INITIAL CLOSING CONDITIONS

Initial Closing Conditions in Favour of Hydro

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

- (a) **Representations and Warranties.** All of the representations and warranties of each **Keeyask Cree Nation** contained in subsection 15.1.2 of this **JKDA** shall be true and correct in all material respects at the **Initial Closing** with the same force and effect as if such representations and warranties were made at and as of such time and a certificate of its **Chief and Council** dated the **Initial Closing Date** to that effect shall have been delivered to **Hydro**, such certificates to be in form and substance satisfactory to **Hydro** acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions to be complied with or performed by each **Keeyask Cree Nation** at or before the **Initial Closing**, including, without limitation, terms, covenants and conditions which the **Keeyask Cree Nations** have agreed are to be complied with or performed by their respective **KCN Investment Entities**, shall have been complied with or performed in all material respects, and a certificate of its **Chief and Council** and of the senior officers of each of the **KCN Investment Entities** dated the **Initial Closing Date** to that effect shall have been delivered to **Hydro**, such certificates to be in form and substance satisfactory to **Hydro** acting reasonably;
- (c) **Limited Partnership Agreement.** Each **KCN Investment Entity** shall have duly executed and delivered the **Limited Partnership Agreement**;
- (d) **Subscriptions and Payments.** Each **KCN Investment Entity** shall have duly executed and delivered a **Subscription Agreement** together with its **Nominal Subscription Cash** with respect thereto in the manner described in subsection 4.1.3 of this **JKDA** and shall have paid its **Initial Closing Cash** in **Permitted Funds**;
- (e) **KCN Financing Agreements.** Each **KCN Financing Agreement** shall have been duly executed and delivered by the respective **KCN Investment Entities**;
- (f) **Hydro Agreements.** Each of the **Hydro Agreements** shall have been duly executed and delivered by the respective parties thereto other than **Hydro**;

- (g) **IOA.** The **Limited Partnership** shall have accepted the assignment of the **Interconnection and Operating Agreement** and assumed the obligations thereunder;
- (h) **Pre-Closing Assets and Liabilities.** All of the **Pre-Closing Assets** and the **Pre-Closing Liabilities** shall have been assigned, transferred and set over to the **Limited Partnership** and the **Limited Partnership** shall have accepted such assignment and assumed such liabilities;
- (i) **No Orders or Injunctions.** There shall be no order or preliminary or permanent injunction then entered in any action or proceeding in any court of competent jurisdiction or governmental authority (which has jurisdiction over the enforcement of the **Applicable Laws**) making illegal or prohibiting the consummation of the **Initial Closing Transaction**;
- (j) **Legal Matters.** All documentation relating to the due authorization and completion of the transactions contemplated hereunder, and all actions and proceedings required to be taken on or prior to the **Subscription Date** or the **Initial Closing Date** in connection with the performance by each **Keeyask Cree Nation** of its obligations under this **JKDA** and by its **KCN Investment Entity** shall have been completed to the satisfaction of **Hydro** and its counsel acting reasonably, and **Hydro** shall have received copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation of such transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to **Hydro** and its counsel, acting reasonably; and
- (k) **Legal Opinions.** Counsel to each **Keeyask Cree Nation** and its **KCN Investment Entity**, on behalf of their respective clients, each shall have delivered to **Hydro** a favourable opinion as to power, authority, capacity and due execution only, in form and substance satisfactory to counsel for **Hydro**, acting reasonably.

Hydro may not rely upon the failure to satisfy any of the conditions in this subsection 16.1.1 if the condition would have been satisfied but for a material default by **Hydro** in complying or causing compliance with its obligations set forth in this **JKDA**.

Initial Closing Conditions In Favour of the Keeyask Cree Nations

16.1.2 The obligations of the **Keeyask Cree Nations** related to the **Initial Closing Transaction** shall be subject to and contingent upon the fulfillment of the following conditions precedent to the satisfaction of the **Keeyask Cree Nations**, acting by a **KCN Majority**, as certified or waived in writing by **Keeyask Cree Nations**, acting by a **KCN Majority**, on the **Initial Closing Date**:

- (a) **Representations and Warranties.** All of the representations and warranties of **Hydro** contained in subsection 15.1.1 shall be true and correct in all material respects at the **Initial Closing** with the same force and effect as if such representations and warranties were made at and as of such time, and certificates of the President of **Hydro** dated the **Initial Closing Date** to that effect, shall have been delivered to each **Keeyask Cree Nation**, such certificates to be in form and substance satisfactory to the **Keeyask Cree Nations**, acting by a **KCN Majority**, acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions to be complied with or performed by **Hydro**, including, without limitation, terms, covenants and conditions which **Hydro** has agreed are to be complied with or performed by the **Limited Partnership** or the **General Partner** at the **Initial Closing** shall have been complied with or performed in all material respects, and certificates of the President of **Hydro** and the Chairman of the **General Partner**, on its own behalf and as general partner of the **Limited Partnership**, dated the **Initial Closing Date** to that effect, shall have been delivered to each **Keeyask Cree Nation**, such certificates to be in form and substance satisfactory to the **Keeyask Cree Nations**, acting by a **KCN Majority**, acting reasonably;
- (c) **Limited Partnership Agreement.** Each of **Hydro** and the **General Partner** shall have duly executed and delivered the **Limited Partnership Agreement**;
- (d) **Subscriptions and Payments.** Each of **Hydro** and the **General Partner** shall have duly executed and delivered a **Subscription Agreement** together with its **Nominal Subscription Cash** with respect thereto in the manner described in subsection 4.1.3 of this **JKDA** and shall have paid its **Initial Closing Cash**;
- (e) **Hydro Agreements.** Each of the **Hydro Agreements** shall have been duly executed and delivered by the **Limited Partnership** and **Hydro** and, in respect of the **Project Financing Agreement**, the conditions of advance set forth in sections 4.1 and 4.2 thereof shall have been satisfied or waived by **Hydro**;
- (f) **KCN Financing Agreements.** Each of the **KCN Financing Agreements** shall have been duly executed and delivered by **Hydro** and the conditions of advance set forth in sections 7.1 and 7.2 thereof shall have been satisfied or waived by **Hydro**;
- (g) **Pre-Closing Assets and Liabilities.** All of the **Pre-Closing Assets** and the **Pre-Closing Liabilities** shall have been assigned, transferred and set over to the **Limited Partnership** and the **Limited Partnership** shall have accepted such assignment and assumed such liabilities;

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

The **Keeyask Cree Nations** may not rely upon the failure to satisfy any of the conditions in this subsection 16.1.2 if the condition would have been satisfied but for a material default by a **Keeyask Cree Nation** in complying or causing compliance with its obligations set forth in this **JKDA**.

Actions to Satisfy Initial Closing Conditions

16.1.3 Each of the **Parties** hereby agrees to take all such actions as are within its power to control and to use its best efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with any conditions set forth in this Article 16 which are for the benefit of any other **Party** hereto.

Further Documents

16.1.4 The **Parties** will enter into and to the extent such actions are within its power will cause the **Limited Partnership**, the **General Partner** and the **KCN Investment Entities** to enter into such agreements and execute and deliver, or cause to be done, made, executed or delivered, all such further acts, documents, directives, authorizations and things as may be reasonably necessary or desirable in connection with the matters referred to in this **JKDA**,

including, without limitation, such agreements and documentation as may be contemplated or required pursuant to this Article 16.

ARTICLE 17

TRANSITION AND IMPLEMENTATION FUNDING

17.1 PRE-CONSTRUCTION PERIOD

Transition Funding

17.1.1 The **Parties** agree that, subject to subsection 17.4.1, **Hydro** will provide funding, which will form part of the **Pre-Closing Liabilities**, to each **Keeyask Cree Nation** to reimburse reasonable costs incurred following the **Date of this JKDA** up to the **Construction Start**, in respect of matters and things reasonably required to be undertaken by the **Keeyask Cree Nation** arising out of or in connection with this **JKDA**, including:

- (a) participation in the regulatory process, in the manner described in section 3.1;
- (b) completion of the **Initial Closing** and all matters reasonably related thereto, as described in section 4.4;
- (c) involvement, if any, in the defence of legal challenges, if any, in respect of the **Closing Licences**;
- (d) the prosecution or defence by a **Keeyask Cree Nation** of legal challenges, if any, in respect of the **Referendum**, which the **Keeyask Cree Nation** chooses to prosecute or defend; and
- (e) the negotiation of **Direct Negotiation Contracts**, in the manner set forth in Article 13.

17.2 CONSTRUCTION PERIOD

Implementation Funding

17.2.1 The **Parties** agree that, subject to subsection 17.4.1, the **Limited Partnership** will provide funding to each **Keeyask Cree Nation** to reimburse reasonable eligible costs incurred following the **Construction Start** up to the **Final Closing Date**, in respect of matters and things reasonably required to be undertaken by the **Keeyask Cree Nation** in connection with its participation in the development of the **Keeyask Project** in the manner provided in this **JKDA**, up to a maximum aggregate amount for all of the **Keeyask Cree Nations** of eleven million two hundred and thirty-one thousand (\$11,231,000) dollars, unless otherwise agreed, adjusted annually for inflation, commencing in the year 2013, by the cumulative percentage change in the Consumer Price Index for Manitoba, using 2011 as the base year.

Eligible Costs

17.2.2 Costs eligible for reimbursement under subsection 17.2.1 are to be agreed upon by **Hydro** and the **Keeyask Cree Nations**, acting reasonably, subject to the following guidelines:

- (a) eligible costs generally shall include:
 - (i) costs related to a **Keeyask Cree Nation's** participation, in the manner provided in this **JKDA**, on the **Construction Advisory Committee**, the **Monitoring Advisory Committee** and the **Advisory Group on Employment** and on other advisory committees to the **Limited Partnership** as may be established from time to time;
 - (ii) costs related to the administration and monitoring of a **KCN Investment Entity's** investment in the **Limited Partnership** and to exercise its rights as a limited partner of the **Limited Partnership**;
 - (iii) costs related to community involvement or community consultation processes associated with the **Keeyask Project**; and
 - (iv) costs related to the management of issues and communications associated with a **Keeyask Cree Nation's** or a **KCN Investment Entity's** involvement in the **Keeyask Project**;
- (b) eligible costs generally shall not include:
 - (i) costs related to work, services or functions that have been identified as being performed by other parties, including the **Limited Partnership**, **Hydro** or contractors or sub-contractors;
 - (ii) costs related to work, services or functions that have been identified as being performed by a **Keeyask Cree Nation** or **Members** or a **KCN Business** under any **Direct Negotiation Contract**;
 - (iii) costs related to work, services or functions that have been identified as being performed by **Members** employed by the **Limited Partnership** or by **Hydro**; or
 - (iv) costs related to work, services or functions agreed to be funded under any other agreement.

Construction Delay

17.2.3 If construction of the **Keeyask Project** has commenced, but is delayed for any reason for a period greater than three (3) months without this **JKDA** having been terminated in accordance with the provisions of clause 21.1.1 (c), then the **Parties** agree to negotiate in good faith revised arrangements with respect to the reimbursement of a **Keeyask Cree Nation's** reasonable costs on the basis that, in the circumstances, it would not be practical for a **Keeyask Cree Nation** to lay off all of its staff and completely terminate all of its implementation activities referred to in clause 17.2.2 (a) during this holding period, nor would it be reasonable for a **Keeyask Cree Nation** to carry on all its implementation activities during this holding period without diminution.

17.3 POST-CONSTRUCTION PERIOD

17.3.1 No costs of any nature or kind of a **Keeyask Cree Nation** or a **KCN Investment Entity** incurred after the **Final Closing Date** will be reimbursed by the **Limited Partnership** or by **Hydro**, unless otherwise agreed to in writing by the **Limited Partnership** or by **Hydro** in their sole discretion.

17.4 GENERAL

Work Plan and Budget and Reimbursement Policy

17.4.1 The reimbursement of reasonable costs described in subsections 17.1.1 and 17.2.1 shall be subject to:

- (a) the **General Partner** first approving a work plan and budget from the **Keeyask Cree Nation** prior to any such costs being incurred, it being acknowledged that the **General Partner** has delegated this duty to **Hydro** pursuant to subsection 9.1.1; and
- (b) the **Reimbursement Policy**.

Costs on Termination

17.4.2 If this **JKDA** is terminated in accordance with the provisions of Article 21, the **Parties** agree that, subject to subsection 17.4.1, the **Limited Partnership** will pay to a **Keeyask Cree Nation**:

- (a) such portion of the funding described in subsection 17.1.1, if any, remaining to be paid; or
- (b) such portion of the funding described in subsection 17.2.1, if any, as may be appropriate in the circumstances in order to wind down a **Keeyask Cree Nation's**

implementation activities, as may be agreed to by the **Limited Partnership** and a **Keeyask Cree Nation**, both acting reasonably.

ARTICLE 18

EXPERT REVIEW MECHANISMS

18.1 EXPERT REVIEWS

18.1.1 Reviews by **Experts** referred to in the **PPA** or in subsection 9.2.11 of this **JKDA** shall be conducted pursuant to the provisions of this Article 18.

Copy of Report

18.1.2 **Hydro** agrees to provide to each **Keeyask Cree Nation** a copy of the report referred to in 5.1 of the **PPA** at the same time as it provides a copy to the **Limited Partnership**.

Right to Appoint First Expert

18.1.3 Where:

- (a) **Hydro** or the **Keeyask Cree Nations**, acting by a **KCN Majority**, in any **Fiscal Year** believe that the time periods referred to within the definitions of **On-Peak Hours** or **Off Peak Hours** are no longer appropriate, or, if applicable, would be appropriate again, for capturing the significant differential in energy prices which exist, on a consistent basis, between transactions which occur in **On-Peak Hours** or in **Off-Peak Hours**, as described in section 6.1 of the **PPA**;
- (b) at any time during the term of the **PPA**, **Hydro** (or an affiliate of **Hydro**) does not have an agreement with the **Limited Partnership** to operate and maintain and/or to control and operate the **Keeyask Project**, including matters related to the dispatch of the **Keeyask Generating Station**, on substantially the same terms and conditions as those contained in Article 9 of this **JKDA**;
- (c) the **Keeyask Cree Nations**, acting by a **KCN Majority**,
 - (i) dispute whether **Hydro** has made **On-Peak Rate Adjustments** or **Off-Peak Rate Adjustments** in accordance with the provisions of the **PPA**;
 - (ii) dispute whether **Hydro** has included all **Integrated Power System Environmental Benefits and Attributes** in the determination of the **Energy Charge**;
 - (iii) no later than ninety (90) days following the end of the fifth **Fiscal Year** following the **Fiscal Year** in which the **O & M Services** commenced, and each **Fiscal Year** thereafter, wish to have reviewed and to obtain non-

binding recommendations as to whether **Hydro** has provided the **O & M Services** to the **Limited Partnership** in a manner consistent with the **O & M Service Parameters**;

- (iv) dispute whether **Hydro** has provided the **System Operations Services** to the **Limited Partnership** in a manner consistent with the **System Operations Service Parameters**; or
- (v) dispute whether all or any portion of the **Operating Services Costs** have been charged to the **Limited Partnership** in a manner consistent with the **Operating Cost Allocation Parameters**;

then **Hydro**, or the **Keeyask Cree Nations**, acting by **KCN Majority**, as the case may be, may give written notice to the other that it wishes to appoint an **Expert**, pursuant to the procedure set out in subsection 18.2.1, subject to the condition that an **Expert** shall not be appointed if an **Expert** previously had been appointed within one (1) year of the written notice, in the case of matters referred to in clauses (c) (i), (iv) and (v), within two (2) years, in the case matters referred to in clauses (a) and (c) (ii), and, in the case matters referred to in clause (c) (iii), within ten (10) years, unless a **Material Loss** has occurred in the period, in which case this limitation shall not apply.

First Expert Review

18.1.4 The **Expert** shall review and provide non-binding recommendations, as may be appropriate:

- (a) in respect of clause 18.1.3 (a), as to whether the time periods referred to in **On-Peak Hours** or **Off Peak Hours** continue to be appropriate, and if such **Expert's** recommendation is that such time periods are no longer appropriate, or are appropriate again, then such **Expert** shall provide its recommendations as to what adjustments should be made to such time periods as a result. If such **Expert's** recommendation is that there is no longer any significant differential in energy prices, on a consistent basis, between the **On-Peak Hours** or **Off-Peak Hours**, and **Hydro** and the **Keeyask Cree Nations**, acting by a **KCN Majority**, agree, then the use of separate **On-Peak Rates** and **Off-Peak Rates** shall be eliminated as provided in section 6.1 of the **PPA**;
- (b) in respect of clause 18.1.3 (c) (i), as to whether **Hydro** has made the **On-Peak Rate Adjustments** or the **Off-Peak Rate Adjustments** in accordance with the provisions of the **PPA**, and if such **Expert's** recommendation is that **Hydro** has not made such adjustments in accordance with the **PPA**, then such **Expert** shall provide its recommendations as to any adjustments that should be made in favour of the **Limited Partnership** as a result;

- (c) in respect of clause 18.1.3 (c) (ii), as to whether all of the amounts applicable to **Integrated Power System Environmental Benefits and Attributes** were included in the determination of the **Energy Charge** in accordance with the **PPA**, and if such **Expert's** recommendation is that they were not included, then such **Expert** shall provide its recommendations as to what additional amounts should be added to the **Energy Charge**;
- (d) in respect of clause 18.1.3 (c) (iii), as to whether **Hydro** has provided the **O & M Services** to the **Limited Partnership** in accordance with the **O & M Service Parameters**, and if such **Expert's** recommendation is that **Hydro** has not so provided the **O & M Services**, then such **Expert** shall provide its recommendations as to the direct losses suffered by the **Limited Partnership** as a result;
- (e) in respect of clause 18.1.3 (c) (iv), as to whether **Hydro** has provided the **System Operations Services** to the **Limited Partnership** in accordance with the **System Operations Service Parameters**, and if such **Expert's** recommendation is that **Hydro** has not so provided the **System Operations Services**, then such **Expert** shall provide its recommendations as to the direct losses suffered by the **Limited Partnership** as a result;
- (f) in respect of clause 18.1.3 (c)(v), as to whether the **Operating Services Costs** have been charged to the **Limited Partnership** in accordance with the **Operating Cost Allocation Parameters**, and if such **Expert's** recommendation is that **Hydro** has not so charged the **Operating Services Costs**, then such **Expert** shall provide its recommendations as to any adjustments that should be made in favour of the **Limited Partnership** as a result; or
- (g) in respect of clause 18.1.3 (b), as to whether any amendments are required to the **PPA** due to **Hydro** (or an affiliate of **Hydro**) not having an agreement with the **Limited Partnership** to operate and maintain and/or to control and operate the **Keeyask Project**, including matters related to the dispatch of the **Keeyask Generating Station**, on substantially the same terms and conditions as those contained in Article 9 of this **JKDA**, and if such **Expert's** recommendation is that amendments are required to the **PPA**, then such **Expert** shall provide its recommendations as to what amendments to the **PPA** should be made as a result.

Use of First Expert as Mediator

18.1.5 If the **Keeyask Cree Nations**, acting by a **KCN Majority**, or **Hydro** are not prepared to accept the recommendations of the first **Expert** under subsection 18.1.4, either of them may give written notice to the other and to such **Expert** that it wants to negotiate a resolution of the dispute with the assistance of the **Expert** acting as a mediator, and the parties shall use good faith efforts with the assistance of the **Expert** as mediator to reach agreement within forty-five (45) days of the delivery of such notice. Any such agreement reached between

Hydro and the **Keeyask Cree Nations**, acting by a **KCN Majority** shall be final and binding on the parties.

Review by Second Expert

18.1.6 If, within forty-five (45) days of the delivery of the notice referred to in subsection 18.1.4, the parties have not reached an agreement, either of them may give written notice to the other that it wishes to appoint a second **Expert**, pursuant to the procedure set out in subsection 18.2.1, who will make a decision, as the case may be, that shall be final and binding upon the parties, after having reviewed the first **Expert's** report and recommendations, and the written submissions, if any, of the parties, and, in the case of clauses (a), (b) and (c), below, the **PPA** and the report referred to in subsection 18.1.2:

- (a) in the case of matters relating to clause 18.1.3 (a), as to whether the time periods referred to in **On-Peak Hours** or **Off Peak Hours** continue to be appropriate, and if not, what adjustments should be made to such time periods as a result, or as to whether there continues to be any significant differential in energy prices, on a consistent basis, between the **On-Peak Hours** or **Off-Peak Hours**. If such second **Expert's** decision is that there is no longer any significant differential in energy prices, on a consistent basis, between the **On-Peak Hours** or **Off-Peak Hours**, then the use of separate **On-Peak Rates** and **Off-Peak Rates** shall be eliminated as provided in section 6.1 of the **PPA**;
- (b) in the case of matters relating to clause 18.1.3 (b) (i), as to whether any changes are required to the **On-Peak Rate Adjustments** or the **Off-Peak Rate Adjustments**;
- (c) in the case of matters relating to clause 18.1.3 (b) (ii), as to whether all of the applicable sales of **Integrated Power System Environmental Benefits and Attributes** were included in the determination of the **Energy Charge** and if not, what additional amount should be added to the **Energy Charge**;
- (d) in the case of matters relating to clause 18.1.2 (b) (iii), as to whether **Hydro** has provided the **O & M Services** to the **Limited Partnership** in accordance with the **O & M Service Parameters**, and if such second **Expert's** decision is that **Hydro** has not so provided the **O & M Services**, it shall make a decision as to the direct losses suffered by the **Limited Partnership** as a result, and payable by **Hydro**;
- (e) in the case of matters relating to clause 18.1.3 (b) (iv), as to whether **Hydro** has provided the **System Operations Services** to the **Limited Partnership** in accordance with the **System Operations Service Parameters**, and if such second **Expert's** decision is that **Hydro** has not so provided the **System Operations Services**, it shall make a decision as to the direct losses suffered by the **Limited Partnership** as a result, and payable by **Hydro**;

- (f) in the case of matters relating to clause 18.1.3 (b) (v), as to whether all or any portion of the **Operating Services Costs** have been charged to the **Limited Partnership** in accordance with the **Operating Cost Allocation Parameters**, and if such second **Expert's** decision is that **Hydro** has not so charged the **Operating Services Costs**, such second **Expert** shall make a decision as to any adjustments that should be made in favour of the **Limited Partnership** as a result, and payable by **Hydro**; or
- (g) in the case of matters relating to clause 18.1.3 (b), as to whether any amendments are required to the **PPA** due to **Hydro** (or an affiliate of **Hydro**) not having an agreement with the **Limited Partnership** to operate and maintain and/or to control and operate the **Keeyask Project**, including matters related to the dispatch of the **Keeyask Generating Station**, on substantially the same terms and conditions as those contained in Article 9 of this **JKDA**, and if such second **Expert's** recommendation is that amendments are required to the **PPA**, then such **Expert** shall make a decision as to what amendments to the **PPA** should be made as a result.

No Appeal of Decision of Second Expert

18.1.7 Subject to the provisions of subsection 18.1.8, the decision of the second **Expert**, including findings of fact, shall not be subject to any appeal or review.

Limitation on Expert's Authority

18.1.8 An **Expert** making recommendations or decisions must adhere to the **O & M Service Parameters**, the **System Operations Service Parameters**, or the **Operating Cost Allocation Parameters**, as the case may be, in making its recommendations or decisions and does not have the authority:

- (a) to amend or vary the **O & M Service Parameters**, the **System Operations Service Parameters** or the **Operating Cost Allocation Parameters**; or
- (b) to make any award, including an award of damages, if any, for losses suffered or incurred by the **Limited Partnership**, beyond the period under review; or
- (c) to direct or constrain in any way whatsoever **Hydro's** sole ability and authority to dispatch the **Integrated Power System** or the **Keeyask Project** as part of the **Integrated Power System** in such manner as **Hydro** in its sole discretion deems appropriate.

18.2 GENERAL PROVISIONS

Appointment of Expert

18.2.1 Upon the receipt of a written notice by either **Hydro** or the **Keeyask Cree Nations**, acting by a **KCN Majority**, that the other party wishes to appoint an **Expert**, the **Keeyask Cree Nations**, acting by a **KCN Majority**, and **Hydro** shall endeavour to agree on the appointment of an **Expert**. If they are unable to agree on the appointment of an **Expert**, either of them may make application to either the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) to appoint a person to act as **Expert** from a list of persons submitted by the **Keeyask Cree Nations**, acting by a **KCN Majority**, and **Hydro**, or if only one of them submits a list, from the list submitted by that party.

Instructions to Expert

18.2.2 The party requesting a review by, or causing the appointment of, an **Expert** pursuant to this Article 18 shall provide the **Expert** with a copy of the **JKDA** and, if applicable, a copy of the **PPA**, a report under section 5.1 of the **PPA**, and all relevant information and documents as would be compellable in a court of law. The **Expert** may require relevant information and documents to be disclosed by any party, except such documents as would not be compellable if the action were brought in a court of law (and in this regard, **Hydro** agrees not to assert or rely upon Crown privilege, if applicable), and any such party shall provide such disclosure.

Submissions to Second Expert

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

Maximum Review Period

18.2.4 A review by an **Expert** commenced under any of clauses 18.1.3 (a) and 18.1.3 (c) of this **JKDA**, may include in the review period the **Fiscal Year** for which the review was commenced and up to the immediately preceding two **Fiscal Years**, provided that a review by an **Expert** has not been commenced under such section within the three **Fiscal Years** immediately preceding the commencement of such review. In no case shall a review by an **Expert** under this Article include more than three **Fiscal Years** in the period under review.

Time for Decision

18.2.5 The **Expert** shall provide its recommendations or make its decision, as the case may be, within ninety (90) days of its appointment, or within such longer period as the **Keeyask Cree Nations**, acting by a **KCN Majority**, and **Hydro** may agree, upon the request of the **Expert**.

Costs

18.2.6 The **Keeyask Cree Nations** and **Hydro** shall each pay their own costs incurred in connection with a review conducted by an **Expert** under this Article 18 and the **Limited Partnership** shall pay the fees and expenses of the **General Partner** and of the **Expert**, subject to a different decision as to costs by the **Expert** made following the completion of such review.

Binding on Limited Partnership

18.2.7 Any agreement made between **Hydro** and the **Keeyask Cree Nations**, acting by a **KCN Majority**, or any decision made by a second **Expert** in accordance with the provisions this Article 18, shall be binding on **Hydro**, the **Limited Partnership**, each **Keeyask Cree Nation** and each **KCN Investment Entity**.

ARTICLE 19

DISPUTE RESOLUTION

19.1 GENERAL

Application

19.1.1 Subject to subsections 6.1.4 and section 19.1.2 and 19.1.3 of this **JKDA**, all **Claims** which arise under this **JKDA**, the **Limited Partnership Agreement**, any **KCN Financing Agreement**, or any loan or security agreement delivered under or in connection with any **KCN Financing Agreement**, relating to the application, interpretation, meaning, alleged violation, performance or non-performance of any such agreement, including, any **Claim** alleging that a **Party** failed to exercise its discretion reasonably in circumstances where it was required by the terms of the particular agreement to do so, shall be settled by final and binding arbitration pursuant to the provisions of this Article 19.

Exclusions

19.1.2 The provisions of this Article 19:

- (a) do not apply to any of the matters falling within an **Expert Review Mechanism**, or to any recommendation, draft report, mediation, determination or decision which an **Expert** appointed pursuant an **Expert Review Mechanism** may be required to issue, make or decide, as these matters fall within the exclusive jurisdiction of the **Expert** under such provisions and shall not be the subject of a **Claim** under this Article 19. **Claims** concerning the general application, interpretation, meaning, or alleged violation of the procedures or processes outlined in the **Expert Review Mechanisms** may be the subject of a **Claim** under this Article 19, but only to the extent the resolution of any such **Claim** is necessary to enable the **Expert** to carry out the functions exclusively vested in the **Expert** under those provisions or to enforce a decision made by an **Expert**;
- (b) do not apply to, and are not available to resolve disputes under any of the **KCN Adverse Effects Agreements**, which have their own dispute resolution provisions; and
- (c) do not apply to, and are not available to resolve disputes under the **Interconnection and Operating Agreement**, or under any of the **Hydro Agreements**, except indirectly, to the extent set out in section 6.2 of this **JKDA**.

Limitations

19.1.3 **Claims** brought under this Article 19:

- (a) in respect of the **Closing Licences** or the **Fundamental Features**, shall be subject to the provisions of section 3.2 of this **JKDA**;
- (b) in respect of clause 9.2.4 (f) of this **JKDA**, shall be subject to the provisions of section 9.3 of this **JKDA**; and
- (c) if brought pursuant to section 13.5 of this **JKDA**, or involving **Hydro's** rejection of a **Proposer** or a **Proposal** under Article 13, shall be subject to the provisions of section 13.5 of this **JKDA**.

KCN Majority

19.1.4 Whenever in this **JKDA** any action is to be taken or any decision is to be made by a **KCN Majority** in respect of any matter or thing, no single **Keeyask Cree Nation** or **KCN Investment Entity**, other than by **KCN Majority**, shall bring a **Claim** under this Article 19 in respect of such action or decision, or in respect of such matter or thing, but rather the **Keeyask Cree Nations** and the **KCN Investment Entities**, as the case may be, in bringing, or in maintaining or settling, any **Claim** in respect of any such matter or thing pursuant to this Article 19, will act by a **KCN Majority**, and any decision of an **Arbitrator** made in respect of any such **Claim** shall be final and binding upon all **Keeyask Cree Nations**.

Endeavour to Resolve

19.1.5 The **Parties** agree that prior to bringing any **Claim** under this Article 19, the applicable **Parties** will endeavour to resolve such **Claim** among them.

Neutral Fact Finder

19.1.6 After having endeavoured to resolve a **Claim** as provided in subsection 19.1.5, a party wanting to advance such **Claim** by filing a **Claim Notice** as provided in subsection 19.2.1, may request that the **Limited Partnership** appoint, and if requested the **Limited Partnership** shall appoint, a neutral third party to complete a full investigation of the facts in dispute in respect of the **Claim**.

Fact Finder's Opinion

19.1.7 A fact finder appointed pursuant to subsection 19.1.6 shall issue a non-binding opinion of the facts in dispute not less than six (6) weeks after being appointed. All **Parties** shall cooperate fully with the fact finder by making or causing to be made available any documents, personnel, or other evidence required by the fact finder, within a reasonable amount of time. The fact finder shall have the discretion to conduct the investigation in such manner as it reasonably may consider appropriate. If a **Claim Notice** is filed in respect of the **Claim**, a copy of the fact finder's opinion shall not be provided to the **Arbitrator** appointed to resolve the **Claim** in accordance with this Article 19, but shall be provided to the chief executive officers or like persons to whom the **Claim** is referred pursuant to subsection 19.2.3.

19.2 ARBITRATION

Arbitration

19.2.1 A **Claimant** who wants to bring a **Claim** shall provide a **Claim Notice** to the party or parties against whom the **Claim** is brought. The **Claim Notice** shall be delivered within one hundred and eighty (180) days from when the **Claimant** knew or ought to have known of the existence of the **Claim**, subject to the written agreement of the parties to extend this time limit. A **Claimant** who fails to deliver a **Claim Notice** with respect to a **Claim** within the prescribed period shall be deemed to have waived and abandoned the **Claim**.

Reply

19.2.2 A **Respondent** shall provide the **Claimant** with a **Reply** within twenty-eight (28) days of receiving a **Claim Notice**.

Referral to Chief Executive Officers

19.2.3 Within twenty-eight (28) days of the **Claimant's** receipt of the **Reply**, if the **Claim** has not been settled, the **Claimant** and each **Respondent** shall provide the **Claim Notice** and **Reply** to its chief executive officer, or person having like authority. The chief executive officers or persons appointed by them respectively to act on their behalf with authority to settle the **Claim**, shall meet and in good faith attempt to settle the **Claim**. If no settlement is achieved within twenty-eight (28) days of the referral of the **Claim** to the chief executive officers, the **Claim** shall be referred to binding arbitration pursuant to the provisions of *The Arbitration Act* (Manitoba) and the following sections of this Article 19, provided that if there is any inconsistency between the provisions of the said Act and the said sections, the provisions of the said sections shall prevail.

Appointment of Arbitrator

19.2.4 An **Arbitrator** qualified by education and training to pass upon the particular question in dispute, who does not have a business or professional relationship with any of the **Parties**, shall be appointed to adjudicate the dispute, using the following procedure:

- (a) the **Claimant** shall provide to each **Respondent** and each **Respondent** shall provide to the **Claimant** the names, addresses and occupations of not more than three (3) individuals, each of whom it would accept as an **Arbitrator**;
- (b) if any one (1) of the persons on the list of proposed arbitrators is acceptable to the **Claimant** and each **Respondent** and is willing and able to act as the **Arbitrator**, then that person shall be appointed as the **Arbitrator** forthwith; and

- (c) if within forty-five (45) days of the referral of the **Claim** to the chief executive officers the **Claimant** and each **Respondent** cannot agree upon a person to act as **Arbitrator**, any of them may request that the **Arbitrator** be appointed by the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench of **Manitoba** by application to the said court served on each of the other parties to the arbitration.

Length of Hearing

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

Place of Hearing

19.2.6 The arbitration shall take place in Winnipeg, Manitoba at such place and time as the **Arbitrator** shall fix. The law applicable to the arbitration shall be the laws of Manitoba and the laws of Canada applicable in Manitoba.

Powers of the Arbitrator

19.2.7 The **Arbitrator** may determine all questions of law, fact and jurisdiction and all matters of procedure relating to the arbitration. The **Arbitrator** shall have the right to grant legal and equitable relief, including injunctive relief, 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 **JKDA** or any agreement which is the subject matter of the arbitration or any term or provision contained therein, but shall have the authority to resolve any inconsistencies between any such agreements or any terms or provisions contained therein.

Counsel

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

Evidence

19.2.9 Evidence submitted in an arbitration may be presented in writing or orally. The parties to an arbitration shall disclose all relevant information and documents as would be compellable in a court of law. The **Arbitrator** may require relevant information and documents to be disclosed by any party, either prior to or during a hearing, except such documents as would not be compellable if the action were brought in a court of law and in this regard, **Hydro** agrees not to assert or rely upon Crown privilege, if applicable.

Arbitrator's Award

19.2.10 The **Arbitrator** shall deliver the award within ninety (90) days following the completion of the hearing.

Award Final

19.2.11 The award of the **Arbitrator** shall be final and binding on all of the parties to the arbitration and, if applicable as provided in subsection 19.1.4, on all of the **Keeyask Cree Nations** or the **KCN Investment Entities**, as the case may be. The right of any affected party to appeal an award will be limited to a question of law, provided that leave is first obtained from the Court of Queen's Bench based on the criteria listed in section 44 of *The Arbitration Act* (Manitoba).

Costs of the Arbitration

19.2.12 The **Limited Partnership** shall bear the costs of the **Arbitrator** in an arbitration under this Article 19, and each party to an arbitration shall bear its own costs, subject to a different award as to costs by the **Arbitrator** made following the completion of the arbitration.

Performance of Obligations

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

Confidentiality

19.2.14 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.

Arbitrator's Undertaking

19.2.15 Upon appointment, every **Arbitrator** shall swear or affirm an undertaking in the form set forth in Schedule 19-1.

Vacancy

19.2.16 Where a vacancy occurs in the office of the **Arbitrator** after the commencement of proceedings, the proceedings need not recommence but may, with the unanimous consent of the parties to that arbitration, continue before a replacement **Arbitrator**. In the absence of such

unanimous consent, the arbitration must recommence as if it were a new matter before a new **Arbitrator**.

ARTICLE 20

RATIFICATION AND SIGNING

20.1 RATIFICATION

Ratification Process

20.1.1 The ratification process set out in Article 3 of the **Ratification Protocol**, attached hereto as Schedule 20-1, is a condition precedent to the signing of this **JKDA** by a **Keeyask Cree Nation**. If **Members** of a **Keeyask Cree Nation** do not ratify the signing of this **JKDA** by **Chief and Council** in the manner provided in **Ratification Protocol**, then that **Keeyask Cree Nation** shall not sign this **JKDA**.

20.2 SIGNING

Arrangements Regarding Signing

20.2.1 The arrangements between the **Parties** with respect to the signing of this **JKDA**, once ratified, are set out in Article 4 of the **Ratification Protocol** attached hereto as Schedule 20-1.

ARTICLE 21

THE EFFECTS OF TERMINATION

21.1 TERMINATION OF THE JKDA

Termination

21.1.1 If:

- (a) the **Limited Partnership** does not make a **Substantial Construction Start** within six (6) years of the date on which the last of the **Closing Licences** required for a **Construction Start** was issued, as provided in subsection 8.1.1; or
- (b) the **Limited Partnership** makes a **Substantial Construction Start** within six (6) years of the date on which the last of the **Closing Licences** required for a **Construction Start** issued, but halts construction and does not restart construction within five (5) years of the date construction was halted, as provided in subsection 8.1.6; or
- (c) at any time after the **Date of this JKDA**, but prior to the commencement of the pouring of concrete for the concrete principal structures of the **Keeyask Project**, the **Limited Partnership** provides notice in writing to each **Keeyask Cree Nation** that it does not wish to proceed with the construction of the **Keeyask Project**, and wishes to terminate this **JKDA**; or
- (d) the **Keeyask Cree Nations**, acting by a **KCN Majority**, terminate their obligations pursuant this **JKDA** as provided in subsection 4.4.4; or
- (e) the **Closing Licences** have not issued to the **Limited Partnership** within ten (10) years of the **Date of this JKDA**, or such earlier or later date as may be agreed to by the **Parties**; or
- (f) the **Limited Partnership** does not make a **Substantial Construction Start** within twelve (12) years of the **Date of this JKDA**;

then, subject to the provisions of this section 21.1, this **JKDA** shall be terminated.

Effect of Termination

21.1.2 If this **JKDA** is terminated due to the occurrence of an event described in subsection 21.1.1, the provisions of this **JKDA** shall forthwith become void and have no further effect, and there shall be no liability or further obligation on the part of the **Limited Partnership**, the **General Partner** or **Hydro** and their respective directors and officers, on the

one hand, or the **Keeyask Cree Nations** or their respective **KCN Investment Entities**, and their elected officials, directors and officers, on the other hand, except as follows:

- (a) the provisions of this Article 21 shall remain in full force and effect and shall survive any such termination;
- (b) the provisions of subsection 4.4.4 in respect of an action for damages, subsection 4.4.5 and section 4.8 of this **JKDA** shall remain in full force and effect and shall survive any such termination until the completion of the closing of the purchase and sale transactions contemplated thereby;
- (c) the **Confidentiality Agreements** shall remain in full force and effect and shall survive any such termination; and
- (d) liability for any prior breach of this **JKDA** shall not be affected.

JKDA Termination Purchase Right

21.1.3 If this **JKDA** is to be terminated for any of the reasons set forth in clauses 21.1.1 (a), (b), (c), (e) or (f), or for any other reason when the **KCN Financing Agreements** are in force and of effect, then **Hydro** shall purchase from each **KCN Investment Entity** all of its **Units** at a price equal to the total obligations then outstanding, if any, under its **KCN Financing Agreement**, together with all accrued and unpaid interest thereon, which amount will be applied by **Hydro** to repay such obligations in full, plus the total of its **Own Cash Invested**, without interest, on the terms and condition set out in the **KCN Financing Agreements**.

Initial Closing Purchase Right

21.1.4 If this **JKDA** is to be terminated for the reasons set forth in clause 21.1.1 (d), then **Hydro** shall purchase from each **KCN Investment Entity** all of its **Units** in the manner provided in subsection 4.4.5 and on the terms and conditions set out in section 4.8.

Release of Interest in Closing Licences

21.1.5 Subject to subsections 21.1.6 and 21.1.7, if this **JKDA** is terminated as provided herein, **Hydro** agrees, and will cause the **Limited Partnership** to agree, to not make use of, and to release and quit claim any interest it or they may have in, the **Closing Licences** issued or requested to be issued pursuant to this **JKDA** and will not seek to reinstate any such **Closing Licences**, if issued.

Without Prejudice to Prior Rights

21.1.6 The **Parties** agree that the termination of this **JKDA** as provided herein shall be without prejudice to their respective rights and interests as they existed prior to entering into this

JKDA, including pursuant to each of the **TCN 1992 Agreement**, the **NFA**, the **War Lake 2005 Agreement**, the **York Factory Comprehensive Agreement** and the **Fox Lake ISA**, and including rights under section 35 of the *Constitution Act, 1982* (Canada), except that:

- (a) each of the **Agreement in Principle**, the **War Lake Participation Agreement**, the **Principals' Memorandum** and the **Process Proposal** shall be terminated and of no force or effect; and
- (b) the **Confidentiality Agreements** shall continue in force and effect.

Future Development

21.1.7 Without limiting the generality of subsection 21.1.6:

- (a) the fact that **Hydro** entered into this **JKDA**, prior to its termination as provided herein, does not constitute an agreement, express or implied, that **Hydro** will not proceed with the future development of one or more generating stations on the lower Nelson River system, or elsewhere, including the **Keeyask Project**, or any other generating station in the vicinity of Gull Rapids, without the support of one or more **Keeyask Cree Nations**; and
- (b) the fact that one or more of the **Keeyask Cree Nations** entered into this **JKDA**, prior to its termination as provided herein, does not constitute acceptance of, or support for, the future development by **Hydro** of any generating station on the lower Nelson River system, or elsewhere, including the **Keeyask Project**, or any other generating station in the vicinity of Gull Rapids, by such **Keeyask Cree Nations**.

ARTICLE 22

RELEASE AND INDEMNITY

22.1 RELEASE AND INDEMNITY

Acknowledgement

22.1.1 Each **Keeyask Cree Nation** acknowledges and agrees that this **JKDA** and the agreements made and consideration provided under this **JKDA**, and its **KCN Adverse Effects Agreement**, have met and fully satisfied all of **Hydro's** obligations to each **Keeyask Cree Nation** and to **Members** in respect of the **Keeyask Project** pursuant to:

- (a) Articles 2, 6 and 13 of the **TCN 1992 Agreement**, and Articles 18.4 and 18.5 of the **NFA** and any other provision of the **NFA** as it relates to **Hydro's** obligations respecting employment, in respect of **TCN** and its **Members**;
- (b) Article 6 of the **War Lake 2005 Agreement**, in respect of **War Lake** and its **Members**;
- (c) Article 9 of the **York Factory Comprehensive Agreement**, in respect of **York Factory** and its **Members**; and
- (d) Article 8 of the **Fox Lake ISA**, in respect of **Fox Lake** and its **Members**.

Release

22.1.2 Notwithstanding subsection 1.1.4, each **Keeyask Cree Nation** hereby releases and forever discharges **Hydro** of and from any and all actions, causes of actions, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which any of the **Keeyask Cree Nations**, or any of the **Keeyask Cree Nations** on behalf of any **Member**, or any of their respective successors, assigns, heirs, executors, or administrators, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, to the extent attributed to, or arising out of, **Hydro's** obligations in respect of the **Keeyask Project** pursuant to the provisions of the agreements set out in clauses 22.1.1 (a) through (d), except as provided in subsection 22.1.3 of this **JKDA**.

Exceptions to Release

22.1.3 Excluded from the release set forth in subsection 22.1.2 are:

- (a) claims by **TCN** and its **Members** pursuant to Articles 18.4 or 18.5 of the **NFA** in respect of business opportunities on or in relation to the **Keeyask Project** following the **Final Closing Date**;

- (b) claims by **War Lake** and its **Members** pursuant to Article 6 of the **War Lake 2005 Agreement** in respect of business opportunities on or in relation to the **Keeyask Project** following the **Final Closing Date**;
- (c) claims by **York Factory** and its **Members** pursuant to sections 9.3.2 (g) or 9.3.2 (k) (ii) of Article 9 of the **York Factory Comprehensive Agreement** in respect of business opportunities on or in relation to the **Keeyask Project** following the **Final Closing Date**; and
- (d) claims by **Fox Lake** and its **Members** pursuant to section 8.4.1 of Article 8 of the **Fox Lake ISA** in respect of business opportunities on or in relation to the **Keeyask Project** following the **Final Closing Date**.

Indemnity

22.1.4 Each **Keeyask Cree Nation** hereby undertakes and agrees to indemnify and save harmless **Hydro** in respect of any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted, directly or indirectly, by any **Member** by reason of any cause, matter or thing whatsoever, to the extent attributed to, or arising out of, **Hydro's** obligations in respect of the **Keeyask Project** pursuant to the provisions of the agreements set out in clauses 22.1.1 (a) through (d), save and except as set forth in this **JKDA**, including the exceptions set out in subsection 22.1.3 of this **JKDA**.

Limitations on Indemnity

22.1.5 The indemnity under subsection 22.1.4 does not cover the costs of **Hydro** in resisting any such claim and is conditional upon **Hydro**:

- (a) giving notice to each applicable **Keeyask Cree Nation** forthwith upon becoming aware of such claim;
- (b) supporting any application by each applicable **Keeyask Cree Nation** to be named as a party to such claim; and
- (c) not settling such claim without the written consent to such settlement of the applicable **Keeyask Cree Nation**, provided that this does not require **Hydro** to appeal any decision or award in respect of which it is seeking indemnity.

Future Acts

22.1.6 Nothing in this Article 22 shall relieve **Hydro** of liability for breaches of this **JKDA**, including any Schedules to this **JKDA**, breaches of the **KCN Adverse Effects Agreements**, breaches of the provisions of any of the agreements referred to in clauses 22.1.1 (a) through (d) in respect of any future development other than the **Keeyask Project**, or for future

negligent or unlawful acts or omissions, or future wilful misconduct, on its own part, or on the part of those for whom it is responsible at law.

ARTICLE 23

ADDITIONAL COVENANTS

23.1 ADDITIONAL COVENANTS

Disclosure by Hydro

23.1.1 **Hydro** has provided to the **Keeyask Cree Nations** and their respective **Advisors**, on a confidential basis pursuant to signed **Confidentiality Agreements**, information and documentation related to the **Keeyask Project** and to **Hydro** in respect of the **Keeyask Project**, considered necessary or advisable in order for a **Keeyask Cree Nation** and its **Advisors** to be fully informed about the **Keeyask Project**, including all information and documentation requested by a **Keeyask Cree Nation** or its **Advisors**. Each **Keeyask Cree Nation** acknowledges having been provided with all information and documentation requested by it related to the **Keeyask Project** and to **Hydro** in respect of the **Keeyask Project**.

No Representations or Warranties as to Financial Returns

23.1.2 **Hydro** has not in any way warranted any information or documentation provided to the **Keeyask Cree Nations**, except as specifically provided in this **JKDA**. Financial projections and projected financial return information in respect of the **Limited Partnership** have been prepared for information and due diligence purposes. **Hydro** has made no representations or warranties and makes no representations or warranties with respect to any financial projections, or any financial return information, or with respect to any returns that potentially may be earned by the **Limited Partnership**, except to the extent that any such information prepared by **Hydro**, was prepared honestly and in good faith.

Acknowledgment

23.1.3 Each **Keeyask Cree Nation** acknowledges and agrees that there is no representation or warranty by **Hydro** to any of the **Keeyask Cree Nations**, either express or implied, that the investment by a **Keeyask Cree Nation** in the **Limited Partnership** will earn a specified rate of return or any return in the short or the long-term or that the arrangements described in this **JKDA**, including, without limitation, the investment by a **Keeyask Cree Nations** in the **Limited Partnership**, will result in the attainment of the goals of any of the **Keeyask Cree Nations**. The **Limited Partnership's** actual results could differ materially from the financial projections and projected financial return information prepared for information and due diligence purposes.

Independent Decisions

23.1.4 Each **Keeyask Cree Nation** and **Hydro** acknowledge that there has been extensive information gathered and exchanged between them in the conduct of the negotiation of this **JKDA** and the development of the **Keeyask Project**. This has included information gathered

or commissioned by each of them, information jointly obtained by them and information obtained by or on behalf of the **Keeyask Cree Nations** but funded by **Hydro**. Each **Keeyask Cree Nation** and **Hydro**, based on their own respective due diligence investigations, have independently determined that they are sufficiently informed to conclude this **JKDA** and proceed with the development of the **Keeyask Project** in the manner and on the terms and conditions set forth in this **JKDA**.

Additional Representation and Warranty of each Keeyask Cree Nation

23.1.5 In addition to the representations and warranties contained elsewhere in this **JKDA**, the **Keeyask Cree Nations** each represent and warrant that throughout the negotiations leading to and including the execution and delivery of this **JKDA**:

- (a) it has been independently advised by **Advisors** of its choice with respect to matters, including due diligence investigations, arising in connection with or dealt with in this **JKDA**;
- (b) **Hydro** on behalf of the **Limited Partnership** has advanced to it financial resources to retain its **Advisors** with respect to matters, including due diligence investigations, arising in connection with or dealt with in this **JKDA**;
- (c) it, either directly or through its **Advisors**, has had the opportunity to ask questions of, and receive answers from **Hydro**, and the officers and employees of **Hydro**, and advisors and consultants to **Hydro** concerning the transactions contemplated by this **JKDA** and, to its knowledge, it has been provided, either directly or through its **Advisors**, with all materials and information requested by it, including any information requested to verify any information furnished to it;
- (d) this **JKDA** has been jointly concluded by representatives of it and of **Hydro** and its duly authorized representatives have participated fully in the conclusion of this **JKDA**;
- (e) this **JKDA** and all of the Schedules, and information explaining this **JKDA** and all of the Schedules, have been made available to **Members**; and
- (f) it has made its **Advisors** available to explain the nature and significance of this **JKDA** and the transactions contemplated by this **JKDA** to **Members** at community meetings open to all **Members** and called for that purpose.

Limitations on Authority of the Keeyask Cree Nations

23.1.6 Each **Keeyask Cree Nation** covenants and agrees with **Hydro** that it shall not:

- (a) take an active part in the business of the **Limited Partnership** or exercise any power in connection therewith;
- (b) execute any document which binds or purports to bind the **Limited Partnership** the **General Partner** or any other **Limited Partner** as such;
- (c) hold itself out as having the power or authority to bind the **Limited Partnership** the **General Partner** or any other **Limited Partner** as such;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other **Limited Partner**, the **General Partner** or **Limited Partnership**;
- (e) bring any action for partition and sale or otherwise in connection with any interest in the property of the **Limited Partnership**, whether real or personal, or register or permit to be filed or registered or remain undischarged any lien or charge in respect of the property of the **Limited Partnership**;
- (f) bring any action against **Hydro**, the **General Partner** or the **Limited Partnership** in relation to the **Keeyask Project**, other than pursuant to:
 - (i) the provisions of Articles 18 and 19 of this **JKDA**; or
 - (ii) the **KCN Adverse Effects Agreements**; or
 - (iii) subsection 22.1.3;
 or
- (g) agree to or permit the transfer to it of any of its **KCN Investment Entity's Units** in the **Limited Partnership**.

ARTICLE 24

MISCELLANEOUS AND GENERAL PROVISIONS

24.1 PUBLIC ANNOUNCEMENTS

General Partner Responsibility

24.1.1 Subject to subsections 24.1.2 and 24.1.3, once the **Limited Partnership** is established, the **General Partner** shall be solely responsible for issuing any press releases or making any public announcements or public statements on behalf of the **Limited Partnership** or on behalf of or with respect to the **Keeyask Project** or the **Business**. The **General Partner**, to the extent practical in the circumstances, shall consult with the **Keeyask Cree Nations** prior to issuing any such press releases or making any such public announcements.

Exception for Keeyask Cree Nations

24.1.2 Subsection 24.1.1 does not preclude the **Chief and Council** of a **Keeyask Cree Nation** from making public statements, including by issuing press releases or making public announcements, regarding matters specific to the interests of the **Keeyask Cree Nation**, subject to requirements regarding confidentiality of information pertaining to the **Limited Partnership**, the **Keeyask Project** or the **Business**.

Exception for Construction and Operational Matters

24.1.3 **Hydro**, whether as the **Project Manager** during the **Construction Period** or as the operator of the **Keeyask Generating Station** following the **Construction Period**, shall be responsible for and shall report on and release as required by law all information pertaining to the construction or the operation and maintenance of the **Keeyask Project**, as the case may be, and shall respond as required by law, or as it deems appropriate, in the event of an emergency. In addition, **Hydro** may report on and release from time to time as it deems appropriate in the ordinary course of business, information of a minor or reporting nature related to the construction, or the operation and maintenance of the **Keeyask Project**.

Hydro Responsibility

24.1.4 Subject to subsections 24.1.2 and 24.1.3, prior to the establishment of the **Limited Partnership**, **Hydro** shall be solely responsible for issuing any press releases or making any public announcements or public statements on behalf of or with respect to the **Keeyask Project**. **Hydro**, to the extent practical in the circumstances, shall consult with the **Keeyask Cree Nations** prior to issuing any such press releases or making any such public announcements.

Prohibition

24.1.5 Subject to subsection 24.1.2, no press releases, public announcements or public statements on behalf of the **Limited Partnership**, or on behalf of, or with respect to the **Keeyask Project**, or the **Business**, not required by law, shall be made or caused to be made by any **Party** except in accordance with this section 24.1.

24.2 CONFIDENTIALITY

Scheduled Confidentiality Agreement

24.2.1 Each **Keeyask Cree Nation** agrees that its **Chief and Council** will be bound by the **Scheduled Confidentiality Agreement** applicable to it as if it were a party thereto, and each **Keeyask Cree Nation** will cause its **Advisors** from time to time, and its **KCN Investment Entity** and its **KCN Investment Entity's** directors, officers, employees and **Advisors** from time to time, to execute a **Scheduled Confidentiality Agreement**, provided that in either case such **Scheduled Confidentiality Agreement** shall not restrict the disclosure of information to a lender contemplated by subsection 5.5.3 of this **JKDA** who has agreed in writing to comply with the terms of such **Scheduled Confidentiality Agreement**.

Hydro Confidentiality

24.2.2 **Hydro** acknowledges that it has accepted, and will continue to accept, from time to time, information from a **Keeyask Cree Nation** of a confidential nature. **Hydro** agrees that where it has accepted information from a **Keeyask Cree Nation** expressed to be of a confidential nature, **Hydro** shall keep such information confidential, except where such information is released into the public domain or otherwise is now or subsequently becomes available to the public through no fault or breach of this **JKDA** on the part of **Hydro**, and as required by law.

24.3 TREATY RIGHTS

Non-Derogation of Treaty Rights

24.3.1 Nothing in this **JKDA** is intended to alter aboriginal or treaty rights of any of the **Keeyask Cree Nations** or other aboriginal peoples recognized and affirmed under section 35 of the *Constitution Act, 1982* (Canada). In respect of the **Keeyask Project**, each of **TCN**, **War Lake**, **York Factory** and **Fox Lake** has expressly consented to this **JKDA** and the transactions contemplated by this **JKDA** on the terms and conditions set out herein, which consent will not survive a termination of this **JKDA** by **Hydro**.

24.4 CONTINGENCY ARRANGEMENTS

Contingency Fees

24.4.1 **Hydro** agrees, and will cause the **Limited Partnership** to agree, that nothing in this **JKDA** prevents or prohibits a **Keeyask Cree Nation**, or its **KCN Investment Entity**, from entering into contingency fee arrangements, that are otherwise lawful, for the purposes of causing a review by an **Expert** in accordance with Article 18 of this **JKDA** or bringing a **Claim** pursuant to Article 19 of this **JKDA**. Although **Hydro** does not favour contingency fee arrangements and encourages a **Keeyask Cree Nation** to find other means of retaining lawyers and consultants, **Hydro** agrees that with respect to a **Claim** arising out of an event or events occurring before the **Final Closing Date**, that it will not make the renegotiation or compromise of a contingency fee arrangement between a lawyer, or consultant, and a **Keeyask Cree Nation**, or its **KCN Investment Entity**, a condition of settlement of the **Claim**, provided that the contingency fee arrangement is fully disclosed to **Hydro** before the finalization of the settlement, and provided that the amount to be paid to the lawyer, or consultant, does not exceed the lesser of one million (\$1,000,000) dollars and thirty (30%) per cent of the settlement amount.

24.5 GENERAL PROVISIONS

Further Assurances

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

Non-Parties

24.5.2 Without in any way limiting the generality of subsection 24.4.1, the **Parties** agree as follows:

- (a) with respect to any obligations of either the **Limited Partnership** or the **General Partner** set forth in this **JKDA**, **Hydro** shall cause the **General Partner**, either on its own behalf, or on behalf of the **Limited Partnership**, as the case may be, to perform such obligations;
- (b) with respect to any rights of either the **Limited Partnership** or the **General Partner** set forth in this **JKDA**, **Hydro** shall be entitled to cause the **General Partner**, either on its own behalf, or on behalf of the **Limited Partnership**, as the case may be, to enforce such rights as though it or they were parties to this **JKDA**;

- (c) with respect to obligations of a **KCN Investment Entity** set forth in this **JKDA**, the applicable **Keeyask Cree Nation** shall cause its **KCN Investment Entity** to perform such obligations; and
- (d) with respect to any rights of a **KCN Investment Entity** set forth in this **JKDA**, the applicable **Keeyask Cree Nation** shall be entitled to cause its **KCN Investment Entity** to enforce such rights as though it was a party to this **JKDA**.

Notice

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

To **CNP**:

Manager of Future Development
Tataskweyak Cree Nation
General Delivery
Split Lake, Manitoba, R0B 1P0

Fax Number: 204-342-2270

Manager of Future Development
War Lake First Nation
General Delivery
Ilford, Manitoba, R0B 0S0

Fax Number: 204-288-4371

General Counsel for the CNP
c/o Campbell, Marr LLP
10 Donald Street
Winnipeg, Manitoba, R3C 1L5

Fax Number: 204-943-7997

To York Factory:

Coordinator of Future Development
York Factory Cree Nation Future Development Office
General Delivery
York Landing, Manitoba, R0B 2B0

Fax Number: 204-341-2261

General Counsel for York Factory
c/o D'Arcy and Deacon LLP
1200 -330 St. Mary Avenue
Winnipeg, Manitoba, R3C 4E1

Fax Number: 204-943-4242

To Fox Lake:

Project Manager - Negotiations Office
Fox Lake Cree Nation
102 - 720 Broadway Avenue
Winnipeg, Manitoba, R3G 0X1

Fax Number: 204-953-2763

To Hydro:

Manitoba Hydro
Attention: General Counsel
3rd Floor, 820 Taylor Avenue
Winnipeg Manitoba, R3C 2P4

Fax Number: 204-474-4947

Assignment

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

No Broker

24.5.5 Each **Party** represents to the others that all negotiations relating to this **JKDA** and the transactions contemplated hereby have been carried on between them directly and without

the intervention of any broker, agent or other intermediary in such manner as to give rise to any claim against any of the **Parties** for a brokerage commission, finder's fee or other like payment. Each of the **Parties** agrees to indemnify and save harmless each other **Party** from and against any such claims whatsoever.

No Unreasonable Delay

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

Amendments

24.5.7 This **JKDA** may be not be amended or modified in any respect except by written instrument signed by all of the **Parties**, except as otherwise provided in this **JKDA** or as expressly provided in the **Ratification Protocol**. However, for greater certainty, the provisions of the **Ratification Protocol** do not apply to any amendment to this **JKDA** except for a re-statement of this **JKDA** in the manner expressly provided in Article 4 of the **Ratification Protocol**.

Enurement

24.5.8 This **JKDA** shall enure to the benefit of and be binding upon the **Parties** and their respective successors and permitted assigns.

Certificate of Independent Legal Advice

24.5.9 The execution of this **JKDA** shall be accompanied by an executed certificate of independent legal advice by each of the **Parties**, which certificates shall be substantially in the form attached hereto as Schedules 24-4 to 24-7.

Counterparts

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

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

TATASKWEYAK CREE NATION

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

WAR LAKE FIRST NATION

Chief

Councillor

Councillor

YORK FACTORY FIRST NATION

Chief

Councillor

Councillor

Councillor

Councillor

FOX LAKE CREE NATION

Chief

Councillor

Councillor

**THE MANITOBA HYDRO-ELECTRIC
BOARD**

Witness

Per: _____

Witness

Per: _____