

**SCHEDULE 1-3**

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**PROJECT FINANCING AGREEMENT**

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between

**KEEYASK HYDROPOWER LIMITED PARTNERSHIP,**

- and -

**THE MANITOBA HYDRO-ELECTRIC BOARD.**

**DATED ●**

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**SCHEDULE 1-3**

**PROJECT FINANCING AGREEMENT**

THIS MEMORANDUM OF AGREEMENT made this ● day of ●, ●.

BETWEEN:

**KEEYASK HYDROPOWER LIMITED PARTNERSHIP,**

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

- and –

**THE MANITOBA HYDRO-ELECTRIC BOARD,**

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

This **PFA** witnesses that in consideration of the covenants agreements herein contained the parties to this **PFA** agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Defined Terms

For the purposes of this **PFA**, 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 shall have corresponding meanings:

“**Advance**” means any one of the **Advances**.

“**Advances**” means advances of money made by **Hydro** under this **PFA** in **Canadian Dollars**.

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

“**Authorization**” means, with respect to any **Person**, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any **Governmental Entity** having jurisdiction over such **Person**.

“**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**.

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

“**Borrowing Notice**” means a notice provided by the **Limited Partnership** to **Hydro** when the **Limited Partnership** wishes to receive an **Advance** under one or more of the **Credit Facilities**.

“**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 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.

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

“**Capital Contribution**” means, with respect to a **Limited Partner** or the **General Partner**, the amount in cash or other property contributed to the **Limited Partnership** by a **Limited Partner** or the **General Partner**.

“**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**.

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

“**Capitalized Lease Liabilities**” of any **Person** means all monetary obligations relating to any leasing or similar arrangement which have been (or, in accordance with **GAAP**, should be) classified as capitalized leases, and for purposes of each **Loan Document** the amount of such obligations shall be the capitalized amount thereof, determined in accordance with **GAAP**, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty.

“**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 the **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 a **Final Closing Preferred Unit Adjustments** have occurred, as provided in subsections 5.3.6 and 5.3.7 of the **JKDA** and in the **LP Agreement**.

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

“**Collateral**” means the **Property** of the **Limited Partnership** or the **General Partner** in respect of which **Hydro** has or will have or is intended to have a lien pursuant to the **Security Documents**.

“**Completion Date**” means the later of:

- (a) the **First Completion Date**; and
- (b) the **Interconnection Facilities Completion Date**.

“**Construction Agreement**” means the agreement dated the same date as this **PFA** between the **Limited Partnership** and **Hydro**, as **Project Manager**, whereby **Hydro**, either directly or indirectly through subcontractors will plan, design, engineer, construct and commission the **Keeyask Project**.

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

“**Construction Notice**” means a notice in writing to be given by **Hydro** pursuant to subsection 8.1.3 of the **JKDA** 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 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 the **JKDA**, a **Construction Start** may occur.

“**Credit Facilities**” means the **Non-Revolving Credit Facility**, the **Revolving Credit Facility** and the **Interconnection Credit Facility**, and “**Credit Facility**” means any one of the **Credit Facilities**, as the context requires.

“**Credit Facility Commitment**” means one of the **Non-Revolving Credit Facility Commitment** or the **Revolving Credit Facility Commitment** or the **Interconnection Credit Facility Commitment**, as the context requires and “**Credit Facility Commitments**” means all of them.

“**Debt**” with regard to any **Person** means, without duplication:

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

“**Debt Ratio**” means at any time the ratio (expressed as a percentage) of: (1) **Debt**, net of the funds on deposit with **Hydro** pursuant to section 6.1(5) and cash and marketable securities, to

(2) **Debt**, net of the funds on deposit with **Hydro** pursuant to section 6.1(5) and cash and marketable securities, plus **Equity Capital** minus **Special Reserves**.

“**Deposit for Debt Retirement Interest Rate**” means for that period of time:

- (a) prior to the twenty-fifth anniversary of the **First Completion Date**, a rate of interest equal to the weighted average of all of the **Thirty Year Rates** established for the **Non-Revolving Credit Advances**, on or before the **First Completion Date**, pursuant to section 3.4(b); and
- (b) from and after the twenty-fifth anniversary of the **First Completion Date**, a rate of interest equal to the **Thirty Year Rate** determined as at the twenty-fifth anniversary of the **First Completion Date**.

“**Distributions**” means any form of distribution of cash by the **Limited Partnership** to the **Limited Partners**, including the return of capital to the **Limited Partners**.

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

“**Equity Capital**” means at any time the cumulative balance of the **Partners’** capital accounts, including amounts designated for **Special Reserves**.

“**Event of Default**” has the meaning specified in section 8.1.

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

“**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 Unit Adjustment**” shall have the meaning ascribed thereto in section 1.2.2 of the **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 the **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.

“**Floating Rate**” means, for any particular day(s) within a given month, the variable rate of interest, expressed as a percentage rate per annum, equal to the **Short Term Borrowing Cost**



incurred by **Hydro** for the month in which such day(s) falls. Provided that if there has been no **Short Term Borrowing Cost** for that month, the variable rate of interest, expressed as a percentage rate per annum, shall be based on the average of the daily **Banker's Acceptance Rates** for that month.

“**Fox Lake**” means Fox Lake Cree Nation.

“**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 ●, in its capacity as the general partner of the **Limited Partnership** pursuant to the terms of the **LP Agreement**.

“**Governmental Entity**” means, other than **Hydro**, any:

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

“**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.

“**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.

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

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

“**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 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 of the **JKDA**, 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**.

“**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 Advance**” means an **Advance** under the **Interconnection Credit Facility**.

“**Interconnection Credit Facility**” means the credit facility to be made available to the **Limited Partnership** by **Hydro** in the maximum amount of the **Interconnection Credit Facility Commitment** and in accordance with the terms hereof.

“**Interconnection Credit Facility Commitment**” means, on any day, an amount determined according to the following formula:

$$A - B$$

where:

- A is the total of the amounts that the **Limited Partnership** is obligated to pay to **Hydro** (Transmission and Distribution Business Unit) pursuant to the provisions of the **Interconnection and Operating Agreement** for: (i) all of the work performed pursuant to the provisions of the **Interconnection and Operating Agreement** up to the **Interconnection Facilities Completion Date**; and (ii) that portion of the work performed pursuant to the provisions of the **Interconnection and Operating Agreement**, after the **Interconnection Facilities Completion Date**, which **Hydro** would if it was incurring the cost for such work, record the amount paid for such work as a capital expense; and
- B is the total of the applicable amounts, if any, referred to in A above that **Hydro** (Power Supply Business Unit) is required to pay on behalf of the **Limited Partnership** in accordance with sections 3.2(2)(e) or 3.2(3)(d)(v), as applicable, of the **PPA**.

“**Interconnection Credit Facility Interest Rate Conversion Date**” means the earlier of:

- (a) the **Completion Date**; and
- (b) the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are then subject to the **Floating Rate** equals in the aggregate, \$40,000,000.

“**Interconnection Credit Project Rate**” means the rate of interest per annum fixed on the **Completion Date** which is equal to the principal weighted average of all of the **Thirty Year Rates** established for the **Interconnection Credit Facility** at the **Completion Date**, with the “principal weighted average” to be calculated as follows:

- (a) by determining the amount of interest that would be paid in a one year time period by the **Limited Partnership** based on the principal amount of the applicable **Interconnection Credit Advances** and the **Thirty Year Rates** established for those **Interconnection Credit Advances**; and
- (b) dividing the total of all of the interest amounts determined in (a) for all of the applicable **Interconnection Credit Advances** by the total principal amount of all of the applicable **Interconnection Credit Advances**.

“**Interconnection Facilities Completion Date**” means the date that the work in respect of the interconnection facilities and interconnection system upgrades is completed, pursuant to the provisions of the **Interconnection and Operating Agreement**, such that the **Keeyask Generating Station** is permitted to interconnect, in accordance with the provisions of the **Interconnection and Operating Agreement**.

“**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 the other power systems.

“**JKDA**” means the Joint Keeyask Development Agreement dated • made between each of the **Keeyask Cree Nations** and **Hydro**.

“**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 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 the **Interconnection and Operating Agreement** and the **PPA**, in accordance with the principles set forth in subsection 10.2.2 of the **JKDA**.

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

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

“**Lien**” means, with respect to any **Property**, any charge, mortgage, pledge, hypothecation, security interest, lien, conditional sale (or other title retention agreement or lease in the nature thereof), lease, servitude, assignment, adverse claim, defect of title, restriction, trust, right of set-off or other encumbrance of any kind in respect of such **Property** (including any **Lien** accounted for as **Capitalized Lease Liabilities** for purposes of a balance sheet prepared in accordance with **GAAP**), whether or not filed, recorded or otherwise perfected under applicable **Laws**.

“**Limited Partner**” means one of **Hydro**, the Cree Nation Partners Limited Partnership, FLCN Keeyask Investments Inc., and York Factory First Nation Limited Partnership as the context requires, in their capacity as limited partners of the **Limited Partnership** and “**Limited Partners**” means all of **Hydro**, the Cree Nation Partners Limited Partnership, FLCN Keeyask Investments Inc., and the York Factory First Nation Limited Partnership, in their capacity as limited partners of the **Limited Partnership**.

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

“**LP Agreement**” means the limited partnership agreement, dated • between the **General Partner**, **Hydro**, the Cree Nation Partners Limited Partnership, FLCN Keeyask Investments Inc., and the York Factory First Nation Limited Partnership.

“**Loan Document**” means any one of the **Loan Documents**.

“**Loan Documents**” means this **PFA** and the **Security Documents** and all other agreements, certificates and instruments delivered or given pursuant to or in connection with this **PFA**.

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

“**Material Governmental Licence**” means any governmental licence issued to the **Limited Partnership** that, if terminated, would materially impair the ability of the **Limited Partnership** to carry on the **Business** in the ordinary course and would have a material adverse effect on the financial condition or business prospects of the **Limited Partnership**.

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

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

“**Non-Revolving Credit Advance**” means an **Advance** under the **Non-Revolving Credit Facility**.

“**Non-Revolving Credit Facility**” means the credit facility to be made available to the **Limited Partnership** in the maximum amount of the **Non-Revolving Credit Facility Commitment** in accordance with the terms hereof.

“**Non-Revolving Credit Facility Commitment**” means:

- (a) on any day during the **Initial Operating Period** an amount equal to:
  - (i) eighty-five (85%) percent of the **Capital Requirements** from the date hereof to that day; less
  - (ii) the **Total Outstandings** on that day under the **Revolving Credit Facility** and all accrued and unpaid interest thereon; and
- (b) on any day at all times other than during the **Initial Operating Period**, an amount equal to:
  - (i) seventy-five (75%) percent of the **Capital Requirements** from the date hereof to that day; less
  - (ii) the **Total Outstandings** on that day under the **Revolving Credit Facility** and all accrued and unpaid interest thereon.

“**Non-Revolving Credit Facility Interest Rate Conversion Date**” shall mean the earlier of:

- (a) the **Final Closing Date**; and
- (b) the day that the **Total Outstandings** under the **Non-Revolving Credit Facility** that are then subject to the **Floating Rate** equals in the aggregate, \$200,000,000.

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

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

“**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**.

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

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

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

- (a) **Liens for Taxes**, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the **Person** in good faith by proper legal proceedings if, in **Hydro’s** opinion:
  - (i) adequate security has been provided to ensure the payment of such **Taxes**, assessments and charges or levies;
  - (ii) adequate reserves with respect thereto are maintained on the books of such **Person** in accordance with **GAAP**; and
  - (iii) in each case, such **Liens** will not materially interfere with the use of the affected **Property** by such **Person** or involve any immediate danger of the sale, forfeiture or loss of such affected **Property**;
- (b) **Liens** resulting from any judgment rendered or claim filed against such **Person** which such **Person** shall be contesting in good faith by proper legal proceedings if, in **Hydro’s** opinion:
  - (i) adequate security has been provided to ensure the payment of such judgment or claim;
  - (ii) adequate reserves with respect thereto are maintained on the books of such **Person** in accordance with **GAAP**; and
  - (iii) in each case, such **Liens** will not materially interfere with the use of such affected **Property** by such **Person** or involve any immediate danger of the sale, forfeiture or loss of such affected **Property**;
- (c) undetermined **Liens** arising in the ordinary course of business which have not at such time been filed pursuant to **Law** against such **Person** or which relate to obligations not due or delinquent;
- (d) **Liens** affecting real **Property** of such **Person** which are:
  - (i) title defects, encroachments or irregularities of a minor nature; or
  - (ii) restrictions, easements, rights-of-way, servitudes or other similar rights in land (including, without restriction, rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other **Persons** and, in each case, such **Liens** will not materially interfere with the use of such real **Property** by such **Person**;
- (e) the right reserved to or vested in any **Governmental Entity** by any statutory provision, or by the terms of any lease, licence, franchise, grant or permit of such

**Person**, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

- (f) any **Lien** resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure worker's compensation, surety or appeal bonds, costs of litigation when required by **Law**, and statutory obligations;
- (g) any **Lien** resulting from security given to a public utility or **Governmental Entity** when required by such utility or **Governmental Entity** in connection with the operation of the business of such **Person**;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grants of real **Property** from the Crown;
- (i) **Liens** arising in the ordinary course of business which are not registered against title to the **Collateral** and are not overdue for a period of more than thirty (30) days or which are being contested at the time by the **Person** in good faith by proper legal proceedings if, in **Hydro's** opinion:
  - (i) adequate security has been provided to ensure payment of such **Liens**;
  - (ii) adequate reserves with respect thereto are maintained on the consolidated books of such **Person** in accordance with **GAAP**; and
  - (iii) in each case, such **Liens** will not materially interfere with the use of the affected **Property** by the **Person** or involve any immediate danger of the sale, forfeiture or loss of such affected **Property**;
- (j) any **Lien**, payment of which has been provided for by the depositing with **Hydro** of an amount in cash, or the obtaining of a surety bond satisfactory to **Hydro**, in its discretion, acting reasonably, sufficient in either case to pay or discharge such **Lien** and which deposit or bond **Hydro** is authorized to use or draw upon for that purpose;
- (k) zoning and building by-laws and ordinances, municipal by-laws, provincial **Laws**, and regulations, which do not adversely affect in any material respect the use of real **Property** concerned in the operation of the business conducted on such real **Property**;
- (l) covenants restricting or prohibiting access to or from lands abutting on controlled access highways which do not adversely impair in any material respect the use of the real **Property** concerned in the operation of the business conducted on such real **Property**;
- (m) **Liens** securing permitted **Purchase Money Debt**; provided that:

- (i) such **Liens** shall extend only to the specific **Property** of the **Limited Partnership** acquired with the proceeds of such **Purchase Money Debt** (and not any other portion of the **Collateral**); and
- (ii) recourse in respect of such **Liens** shall be limited to such specific **Property**;
- (n) **Liens** in respect of **Capitalized Lease Liabilities**; and
- (o) **Liens** in favour of **Hydro** created by the **Security Documents**.

“**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.

“**PFA**” means this loan agreement and all Appendixes and instruments in amendment or confirmation of it.

“**PPA**” means the Power Purchase Agreement dated the same date as this **PFA** between the **Limited Partnership** and **Hydro**, whereby the **Limited Partnership** will sell to **Hydro** and **Hydro** will purchase from the **Limited Partnership** the capacity of and the energy generated by the **Keeyask Generating Station**, as amended or replaced from time to time.

“**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**.

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

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

“**Purchase Money Debt**” means, with respect to any **Person**, all obligations of such **Person** incurred to finance the acquisition of **Property** (which shall not include any improvement or addition to any existing **Property**), and forms part of the **Collateral**.

“**Ratification Protocol**” means the agreement entered into between the **Parties** dated June 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 the **JKDA** and, following ratification, agreed upon terms for the execution of the **JKDA**.

“**Repayment Notice**” means a written notice to **Hydro** from the **Limited Partnership** providing notice of a proposed repayment of all or a portion of the **Total Outstandings** under the **Revolving Credit Facility**.



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

“**Revolving Credit Facility**” means the credit facility to be made available to the **Limited Partnership** in the maximum amount of the **Revolving Credit Facility Commitment** in accordance with the terms hereof.

“**Revolving Credit Facility Commitment**” means one hundred and fifty million (\$150,000,000) dollars.

“**Security Documents**” means those agreements and other documents in favour of **Hydro** described in Appendix C, as such documents may be amended, restated or supplemented from time to time, and any other agreement or instrument which may from time to time be held by **Hydro** as security for all or any portion of the **Obligations**.

“**Short-Term Borrowing Cost**” means, for any month, **Hydro’s** actual weighted borrowing costs, not including any **Guarantee Fee** attributable to those borrowing costs, expressed as a percentage rate per annum for all of **Hydro’s Canadian Dollar** borrowings outstanding during that month which have a term expiring, or are due to be paid, within three hundred and sixty-four (364) days of the date that each such borrowing was first incurred by **Hydro**. **Hydro’s** “actual weighted borrowing costs” shall be calculated on the basis of the actual amount of interest that has accrued during that month divided by the “weighted principal amount” of all borrowing(s) which accrued interest during that month. The “weighted principal amount” for each borrowing is equal to the principal amount of each borrowing multiplied by the number of days the borrowing was outstanding during that month divided by three hundred and sixty-five (365).

“**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 the estimated future capital costs of de-commissioning of the **Keeyask Project** which can be included in such allocation, provided that 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**.

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

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

“**Thirty Year Canada Bond Rate**” means, at any particular date, that rate of interest, expressed as a percentage rate per annum, which a non-callable Government of Canada bond denominated in **Canadian Dollars** would carry if issued on such date at 10:00 a.m. (Winnipeg time) by the Government of Canada at one hundred (100%) percent of its principal amount for a term of thirty (30) years, with the rate of interest being determined by **Hydro** obtaining three (3) rate quotations for the yield on that date of publicly traded **Canadian Dollar** non-callable Government of Canada reference bonds with a thirty (30) year term, as adjusted by the financial

institutions that have provided the three (3) rate quotations to reflect the assumed issue date, and the thirty (30) year term and using the median rate of the three (3) rate quotations obtained.

**“Thirty Year Manitoba Bonds”** means a non-callable bond of the Province of Manitoba denominated in **Canadian Dollars** issued by **Manitoba** at one hundred (100%) percent of the principal amount for a term of thirty (30) years.

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

- (a) the **Thirty Year Canada Bond Rate**, as at 10:00 a.m. (Winnipeg time), for such day; and
- (b) the difference between the **Thirty Year Canada Bond Rate** in effect on that date and the rate of interest, expressed as a percentage rate per annum, for **Thirty Year Manitoba Bonds** had **Thirty Year Manitoba Bonds** been issued by **Manitoba** on that day, at 10:00 a.m. (Winnipeg time), including commission costs, with the rate of interest being determined by **Hydro** obtaining three (3) rate quotations for **Thirty Year Manitoba Bonds** and using the median of the three (3) rate quotations obtained.

**“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.

**“Total Outstandings”** means, at any time:

- (a) with respect to the **Non-Revolving Credit Facility**, an amount calculated in **Canadian Dollars**, at such time, equal to the aggregate amount of all outstanding **Advances** under the **Non-Revolving Credit Facility**;
- (b) with respect to the **Revolving Credit Facility**, an amount calculated in **Canadian Dollars**, at such time, equal to the aggregate amount of all outstanding **Advances** under the **Revolving Credit Facility**;
- (c) with respect to the **Non-Revolving Credit Facility** and **Revolving Credit Facility** in the aggregate, the aggregate of the amounts in paragraph (a) and (b) above;
- (d) with respect to the **Interconnection Credit Facility**, an amount calculated in **Canadian Dollars**, at such time, equal to the aggregate amount of all outstanding **Advances** under the **Interconnection Credit Facility**; and
- (e) with respect to the **Credit Facilities** in the aggregate, the aggregate of the amounts in paragraphs (c) and (d) above.

**“Type of Advance”** means the designation of the type of an **Advance** as a **Non-Revolving Credit Advance**, a **Revolving Credit Advance**, or an **Interconnection Credit Advance**.

“**War Lake**” means War Lake First Nation.

“**York Factory**” means the York Factory First Nation.

## 1.2 Interpretation

This **PFA** shall be interpreted in accordance with the following:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) headings are inserted for convenience only and shall not affect the interpretation of this **PFA**, any other **Loan Documents** or any provisions hereof or thereof;
- (c) references to dollars, unless otherwise specifically indicated, shall be references to **Canadian Dollars**;
- (d) the word “including” shall mean “including without limitation” and “includes” shall mean “includes without limitation”;
- (e) the expressions “the aggregate”, “the total”, “the sum” and expressions of similar meaning shall mean “the aggregate (or total or sum) without duplication”;
- (f) in the computation of periods of time, unless otherwise expressly provided, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”;
- (g) “hereof”, “hereto” and “hereunder” and similar expressions refer to this **PFA** and not to any particular Article, section or other subdivision;
- (h) “Article”, “section” or other subdivision of this **PFA** followed by a number refers to the specified Article, section or other subdivision of this **PFA**;
- (i) accounting terms not specifically defined shall be construed in accordance with **GAAP**; and
- (j) the words “shall” and “will” when used in this **PFA** are each obligatory in nature.

## 1.3 Interpretation of Any Other Loan Documents

The provisions of section 1.2 shall apply to the interpretation of the other **Loan Documents** unless specifically otherwise indicated.

#### **1.4**            **Severability**

If any term or other provision of this **PFA**, or any other **Loan Document**, 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 or thereby is not affected in any manner materially adverse to either party to this **PFA**, all other conditions and provisions of this **PFA** or such other **Loan Document** shall nevertheless remain in full force and effect in which event the parties to this **PFA** shall negotiate in good faith to modify this **PFA**, or such other **Loan Document**, so as to effect the original intent of the parties to this **PFA** as closely as possible in an acceptable manner to the end that the transactions contemplated hereby or thereby are fulfilled to the fullest extent possible.

#### **1.5**            **Entire Agreement**

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

#### **1.6**            **Waiver**

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

#### **1.7**            **Governing Law**

This **PFA** and each other **Loan Document**, shall be governed by, and interpreted in accordance with, the laws of the Province of Manitoba and the federal laws of Canada applicable therein.

#### **1.8**            **Incorporation of Appendixes**

The following Appendixes are attached to and form part of this **PFA**:

Appendix A	Borrowing Notice
Appendix B	Addresses for Notice
Appendix C-1	Direction and Acknowledgment
Appendix C-2	Assignment of Power Purchase Agreement
Appendix C-3	Demand Debenture
Appendix D	Repayment Notice
Appendix E	Authorizations
Appendix F	Hydro Act Provisions

## **1.9**            **Conflicts**

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

## **1.10**           **Acknowledgment**

The parties to this **PFA** acknowledge that the **Limited Partnership** is a limited partnership under the laws of the Province of Manitoba, a limited partner of which is only liable for any of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership, and the limited partner's pro rata share of any undistributed income. The parties to this **PFA** acknowledge that the obligations of the **Limited Partnership** shall not be personally binding upon, nor shall resort be had to, the property of any of the **Limited Partners**, their successors and assigns, or to the property of the **Keeyask Cree Nations** and that resort shall only be had to the property of the **Limited Partnership** or the property of its general partner. The **General Partner** is the sole general partner of the **Limited Partnership**.

## ARTICLE 2 CREDIT FACILITIES

### 2.1 Credit Facilities

**Hydro** agrees on the terms and conditions of this **PFA**, to make available to the **Limited Partnership**:

- (a) from the **Initial Closing Date**, the **Non-Revolving Credit Facility** and the **Interconnection Credit Facility** by making such **Advances** to the **Limited Partnership** as may be requested by the **Limited Partnership** hereunder from time to time in accordance with this **PFA**; and
- (b) from the **Final Closing Date**, the **Revolving Credit Facility** by making such **Advances** to the **Limited Partnership** as may be requested by the **Limited Partnership** hereunder from time to time in accordance with this **PFA**.

### 2.2 Commitments and Facility Limits

- (1) **Hydro** shall not be obliged to make any **Advance** or **Advances** which would cause the **Total Outstandings** under the applicable **Credit Facility** and all accrued and unpaid interest thereon to be greater than the applicable **Credit Facility Commitment** provided that where the **Limited Partnership** is otherwise in good standing under this **PFA**, **Hydro** shall advance in accordance with the provisions of this **PFA**, as an **Advance** to the **Limited Partnership** upon request, the lesser of the amount requested by the **Limited Partnership** and the amount which would, when advanced, cause the **Total Outstandings** under the applicable **Credit Facility** and all accrued and unpaid interest thereon to equal, but not exceed, the applicable **Credit Facility Commitment**.
- (2) The **Non-Revolving Credit Facility** and **Interconnection Credit Facility** are non-revolving credit facilities and the principal amount of any **Advance** that is repaid under either of these **Credit Facilities** may not be reborrowed.
- (3) The **Revolving Credit Facility** is a revolving credit facility and the principal amount of any **Advance** that is repaid may be reborrowed.

### 2.3 Use of Proceeds

The **Limited Partnership** shall use the proceeds of any **Advances** under:

- (a) the **Non-Revolving Credit Facility** in funding the **Capital Requirements**, in such manner as it deems necessary or desirable;
- (b) the **Revolving Credit Facility** to fund a portion of the **Capital Requirements**, in such manner as it deems necessary or desirable, subject to ensuring it has funds

available to make all monthly payments required to be made by the **Limited Partnership** to **Hydro** (Distribution and Transmission Business Unit) pursuant to the provisions of the **Interconnection and Operating Agreement** on account of that portion of the work performed pursuant to the provisions of the **Interconnection and Operating Agreement**, after the **Interconnection Facilities Completion Date**, which **Hydro** would if it was incurring the cost for such work, record the amount paid for such work as an operating expense; and

- (c) the **Interconnection Credit Facility** to fund the payments required to be made by the **Limited Partnership** to **Hydro** (Distribution and Transmission Business Unit) pursuant to the provisions of the **Interconnection and Operating Agreement** for that portion of the work performed pursuant to the provisions of the **Interconnection and Operating Agreement**, that is referred to in the **Interconnection Credit Facility Commitment**.

## 2.4 Repayment

Subject to **Hydro** making an early demand for payment pursuant to section 8.1 following an **Event of Default**, and subject to the mandatory prepayments and repayments in section 2.5 and subject to section 6.1(5), the **Limited Partnership** shall repay, and there shall become due and payable, on the **Maturity Date** the **Total Outstandings** under the **Credit Facilities** and all accrued and unpaid interest.

## 2.5 Mandatory Prepayments and Repayments

### Non-Revolver Credit Facility

- (1) If, on any day, **Hydro** notifies the **Limited Partnership** that the **Total Outstandings** under the **Non-Revolver Credit Facility** and all accrued and unpaid interest thereon exceeds the **Non-Revolver Credit Facility Commitment** the **Limited Partnership** shall within five (5) **Business Days** of receiving such notice, (unless such notice is provided after **Final Closing Date** in which event the five (5) **Business Day** period shall be extended to thirty-five (35) calendar days), repay to **Hydro** an amount sufficient to reduce the **Total Outstandings** under the **Non-Revolver Credit Facility** and all accrued and unpaid interest thereon to an amount equal to or less than the **Non-Revolver Credit Facility Commitment**. This will include any repayment required to be made on the tenth **Anniversary Date** so that the **Total Outstandings** under the **Non-Revolver Credit Facility** and all accrued and unpaid interest thereon on that date do not exceed the applicable **Non-Revolver Credit Facility Commitment** for that **Anniversary Date**.

### Revolving Credit Facility

- (2) If, on any day, **Hydro** notifies the **Limited Partnership** that the **Total Outstandings** under the **Revolving Credit Facility** and all accrued and unpaid interest thereon exceeds the **Revolving Credit Facility Commitment** the **Limited Partnership** shall, within five (5) **Business Days** of receiving such notice, unless such notice is provided after the **Final Closing Date** in which event

the five (5) **Business Day** period shall be extended to thirty-five (35) calendar days, repay to **Hydro** an amount sufficient to reduce the **Total Outstandings** under the **Revolving Credit Facility** and all accrued and unpaid interest thereon to an amount equal to or less than the **Revolving Credit Facility Commitment**.

### Interconnection Credit Facility

#### As at the Completion Date

- (3) The **Limited Partnership** shall, commencing on the **Completion Date** and ending on the twenty-fifth anniversary of the **Completion Date**, repay the **Total Outstandings** under the **Interconnection Credit Facility** as at the **Completion Date** and all accrued and unpaid interest thereon by making semi-annual blended payments of interest and principal. Each semi-annual payment shall be an amount determined by **Hydro** based on an amortization period of fifty (50) years commencing as of the **Completion Date** and an interest rate equal to the **Interconnection Credit Project Rate**.

#### Prior to the twenty-anniversary of the Completion Date

- (4) The **Limited Partnership** shall in respect of **Interconnection Credit Advances** made, after the **Completion Date**, but before the twenty-fifth anniversary of the **Completion Date**, commencing on the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000, repay the **Advances** comprising the \$5,000,000 amount and all accrued and unpaid interest thereon by making semi-annual blended payments of interest and principal. Each semi-annual payment shall be an amount determined by **Hydro** based on an interest rate equal to the **Interconnection Credit Project Rate** and an amortization period calculated using the number of years determined according to the following formula, rounding up to a yearly time period comprised of 365 days:

$$(A - B) \div C$$

where,

A is 18,262 days;

B is the number of days after the **Completion Date** that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000; and

C is 365 days.

#### Twenty-fifth Anniversary Date

- (5) The **Limited Partnership** shall, on the date that is six months after the twenty-fifth anniversary of the **Completion Date**, commence repayment of the **Total**



**Outstandings** outstanding as of the twenty-fifth anniversary of the **Completion Date**, under the **Interconnection Credit Facility** and all accrued and unpaid interest thereon by making semi-annual blended payments of interest and principal. Each such semi-annual payment shall be an amount determined by **Hydro** based on an amortization period of twenty-five (25) years commencing as of the twenty-fifth anniversary of the **Completion Date**, and an interest rate equal to that determined in accordance with section 3.6 (g), such that at the fiftieth anniversary of the **Completion Date** the **Total Outstandings** outstanding as of the twenty-fifth anniversary of the **Completion Date** under the **Interconnection Credit Facility** and all accrued and unpaid interest thereon will be repaid in full.

- (6) The **Limited Partnership** shall in respect of **Interconnection Credit Advances** made, after the **Completion Date**, commencing on the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000, repay the **Advances** comprising the \$5,000,000 amount and all accrued and unpaid interest thereon by making semi-annual blended payments of interest and principal, with each semi-annual payment being an amount determined by **Hydro** based on an interest rate equal to that determined in accordance with section 3.6(g) and an amortization period calculated using the number of years determined according to the following formula, rounding up to a 365 day yearly time period:

$$(A - B) \div C$$

where:

- A is 9,131 days;
- B is the number of days after the twenty-fifth anniversary of the **Completion Date** that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000; and
- C is 365 days.

## 2.6 Optional Reductions

### Non-Revolver Credit Facility

- (1) Subject to section 6.1(5), the **Limited Partnership** shall not be entitled, unless obligated to do so pursuant to the provisions of this **PFA**, to prepay in whole or in part the **Total Outstandings** under the **Non-Revolver Credit Facility**.

### Revolving Credit Facility

- (2) Subject to section 2.6(3) the **Limited Partnership** may prepay all or a portion of the **Total Outstandings** under the **Revolving Credit Facility** in whole or in part without penalty, bonus, or premium, upon at least two (2) **Business Days** notice to **Hydro** and any prepayment shall be pursuant to a **Repayment Notice**. Each

**Repayment Notice** shall be in substantially the form of Appendix D hereto and shall specify the:

- (a) proposed date of such payment; and
- (b) aggregate principal amount of the payment.

If such **Repayment Notice** is given, the **Limited Partnership** shall pay **Hydro** in accordance with such **Repayment Notice** the amount of the payment and all interest on the amount of such payment.

- (3) Each partial payment made by the **Limited Partnership** under the **Revolving Credit Facility** shall be in a minimum aggregate principal amount of \$250,000 and in an integral multiple of \$250,000.
- (4) No payment under the **Revolving Credit Facility** shall reduce the **Revolving Credit Facility Commitment** or the ability of the **Limited Partnership** to reborrow such amounts under the **Revolving Credit Facility**, up to the amount of the **Revolving Credit Facility Commitment**.

**Interconnection Credit Facility**

- (5) The **Limited Partnership** shall not be entitled, unless obligated to do so pursuant to the provisions of this **PFA**, to prepay in whole or in part the **Total Outstandings** under the **Interconnection Credit Facility**.

## ARTICLE 3 LOAN ADVANCES

### 3.1 The Advances

**Hydro** agrees, on the terms and conditions of this **PFA**, to make the **Advances** to the **Limited Partnership** under the **Credit Facilities** as are requested from time to time by the **Limited Partnership** in the **Borrowing Notices** in the aggregate minimum amount and in an integral multiple of the amount set forth below:

- (a) a **Non-Revolver Credit Advance** shall be in an aggregate amount of not less than \$1,000,000 and in an integral multiple of \$500,000;
- (b) a **Revolver Credit Advance** shall be in an aggregate amount of not less than \$250,000 and in an integral multiple of \$250,000; and
- (c) **Interconnection Credit Advances** shall have no minimum restrictions on the quantum that may be borrowed.

### 3.2 Procedure for Borrowing

Where the **Limited Partnership** requires an **Advance** under one or more of the **Credit Facilities** a **Borrowing Notice** shall be given by the **Limited Partnership** to **Hydro** not later than 10:00 a.m. (Winnipeg time) at least two (2) **Business Days** prior to the date of the requested **Advance(s)**. Each **Borrowing Notice** shall be irrevocable and binding on the **Limited Partnership** and shall be in substantially the form of Appendix A and shall specify:

- (a) the requested date of the **Advance(s)**;
- (b) the **Type of Advance** or **Types of Advances** comprising such **Borrowing**; and
- (c) the amount of each **Advance** by **Type of Advance** and the aggregate amount of the **Advances** comprising such **Borrowing**.

Subject to the terms and conditions of this **PFA**, **Hydro** will make such funds available to the **Limited Partnership** on the requested date of such **Borrowing** in immediately available funds by crediting or causing the crediting of the **Limited Partnership's** account or may, in the event of an **Advance** under the **Interconnection Credit Facility** make the payment(s) on the **Limited Partnership's** behalf that is (are) required pursuant to the provisions of the **Interconnection and Operating Agreement**.

### 3.3 Interest on Advances

Each **Advance** or the amount thereof remaining outstanding from time to time, shall bear interest at the interest rate applicable to such **Type of Advance** determined in accordance with this Article 3, from the date on which such **Advance** is received in the account

of the **Limited Partnership** or, if applicable, is paid on the **Limited Partnership's** behalf, to the date on which such **Advance** is repaid in full or otherwise in accordance with this **PFA**.

### **3.4 Interest on Non-Revolving Credit Advances**

**Advances** under the **Non-Revolving Credit Facility** shall, subject to section 3.9, bear interest calculated and payable in the following manner:

- (a) Each **Advance** under the **Non-Revolving Credit Facility** received by the **Limited Partnership** prior to the **Final Closing Date** shall from the date of such **Advance** until the **Non-Revolving Credit Facility Interest Rate Conversion Date** that occurs after such **Advance**, bear interest at the **Floating Rate** in effect from time to time during that period. **Hydro** shall provide the **Limited Partnership** with notice of the **Floating Rate** applicable, from time to time, to each such **Advance** and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable by the **Limited Partnership** in respect of each such **Advance** based on the **Floating Rate** applicable from time to time to such **Advance**. Such interest will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly. **Hydro** shall issue an invoice to the **Limited Partnership** once per month for the interest owed to **Hydro** by the **Limited Partnership** hereunder.
- (b) On the **Non-Revolving Credit Facility Interest Rate Conversion Date**, that is not the **Final Closing Date**, the **Non-Revolving Credit Advances** then outstanding and forming part of the said \$200,000,000 in aggregate principal amount shall until the twenty-fifth **Anniversary Date** bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** in effect on such date. **Hydro** shall, within two (2) **Business Days** of the interest rate conversion, provide the **Limited Partnership** with notice of the said **Thirty Year Rate** applicable to the principal amount of the **Non-Revolving Credit Advances** that have been so converted and its supporting calculation therefore. Every six (6) months commencing on the date that is six (6) months after the **Non-Revolving Credit Facility Interest Rate Conversion Date**, **Hydro** shall issue an invoice to the **Limited Partnership** for the interest payable by the **Limited Partnership** on the **Total Outstandings** under **Non-Revolving Credit Facility** that have been so converted based on the said **Thirty Year Rate**, which interest shall be calculated and compounded semi-annually (not in advance).
- (c) On the **Final Closing Date**, the interest rate on the aggregate amount of all **Advances** under the **Non-Revolving Credit Facility** advanced after the last **Non-Revolving Credit Facility Interest Rate Conversion Date** to occur and then remaining outstanding and subject to the **Floating Rate**, shall until the twenty-fifth **Anniversary Date** bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** in effect on the **Final Closing Date**. **Hydro** shall, within two (2) **Business Days** of the interest rate conversion, provide the **Limited Partnership** with notice of the **Thirty**

**Year Rate** applicable to the said **Non-Revolving Credit Advances** and its supporting calculations therefore. Every six (6) months commencing on the date that is six (6) months after the **Final Closing Date**, **Hydro** shall issue an invoice to the **Limited Partnership** for the interest payable by the **Limited Partnership** on the **Total Outstandings** under the **Non-Revolving Credit Facility** based on the applicable **Thirty Year Rate**, which interest shall be calculated and compounded semi-annually (not in advance).

- (d) Each **Non-Revolving Credit Advance** made on or subsequent to the **Final Closing Date** shall bear interest until the twenty-fifth **Anniversary Date** at a rate per annum equal at all times to the **Thirty Year Rate** in effect on the date the **Advance** is received by the **Limited Partnership**. **Hydro** shall provide the **Limited Partnership** with notice of the **Thirty Year Rate** applicable to each such **Advance** and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable on each such **Advance** by the **Limited Partnership** based on the applicable **Thirty Year Rate**, which interest shall be calculated and compounded semi-annually (not in advance). Every six (6) months, commencing on the date that is six (6) months after the **Advance**, **Hydro** shall issue an invoice to the **Limited Partnership** for the interest amount owed to **Hydro** by the **Limited Partnership** on such **Advance**.
- (e) On the twenty-fifth **Anniversary Date**, the **Non-Revolving Credit Advances** then outstanding shall thereafter bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** calculated by **Hydro** as of the twenty-fifth **Anniversary Date**. **Hydro** shall notify the **Limited Partnership** of the interest payable on the outstanding **Non-Revolving Credit Advances** based on the fixed interest rate determined pursuant to this section, which interest shall be calculated and compounded semi-annually (not in advance) from and after the twenty-fifth **Anniversary Date**. Every six (6) months commencing on the date that is six (6) months after the twenty-fifth **Anniversary Date**, **Hydro** shall issue an invoice to the **Limited Partnership** for the interest amount owed to **Hydro** by the **Limited Partnership** on such outstanding **Non-Revolving Credit Advances**.
- (f) Each **Non-Revolving Credit Advance** made on or subsequent to the twenty-fifth **Anniversary Date** shall bear interest until repaid at a rate per annum equal at all times to the **Thirty Year Rate** in effect on the date the **Advance** is received by the **Limited Partnership**. **Hydro** shall provide the **Limited Partnership** with notice of the **Thirty Year Rate** applicable to each such **Advance** and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable on each such **Advance** by the **Limited Partnership** based on the applicable **Thirty Year Rate**, which interest shall be calculated and compounded semi-annually (not in advance). Every six (6) months, commencing on the date that is six (6) months after the **Advance**, **Hydro** shall issue an invoice to the **Limited Partnership** for the interest amount owed to **Hydro** by the **Limited Partnership** on such **Advance**.

### 3.5 Interest on Revolving Credit Advances

**Revolving Credit Advances** shall, subject to section 3.9, bear interest calculated and payable at a variable rate per annum equal at all times to the **Floating Rate** in effect from time to time. **Hydro** shall provide the **Limited Partnership** with notice of the **Floating Rate** in effect for each month and its supporting calculations therefore. Such interest shall be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly. **Hydro** shall issue an invoice to the **Limited Partnership** once per month for the interest owed to **Hydro** by the **Limited Partnership** hereunder.

### 3.6 Interest on Interconnection Credit Advances

**Interconnection Credit Advances** shall bear interest calculated and payable, in the following manner:

- (a) Each **Interconnection Credit Advance** received by the **Limited Partnership** prior to the **Completion Date**, shall from the date of such **Advance** until the **Interconnection Credit Facility Interest Rate Conversion Date** that occurs after such **Advance**, bear interest at the **Floating Rate** in effect from time to time during that period. **Hydro** shall provide the **Limited Partnership** with notice of the **Floating Rate** applicable from time to time to each such **Advance** and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable by the **Limited Partnership** in respect of each such **Advance** based on the **Floating Rate** applicable from time to time to such **Advance**. Such interest will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly. **Hydro** shall issue an invoice to the **Limited Partnership** once per month for the interest amount owed to **Hydro** by the **Limited Partnership** hereunder.
- (b) On the **Interconnection Credit Facility Interest Rate Conversion Date** that is not the **First Completion Date** or the **Interconnection Facilities Completion Date**, as applicable, the **Interconnection Credit Advances** then outstanding and forming part of the said \$40,000,000 in aggregate principal amount shall until the **Completion Date** bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** in effect on such date. **Hydro** shall, within two (2) **Business Days** of the interest rate conversion, provide the **Limited Partnership** with notice of the said **Thirty Year Rate** applicable to the principal amount of the **Interconnection Credit Advances** that have been so converted and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable by the **Limited Partnership** on the principal amount of the **Interconnection Credit Advances** that have been so converted based on the said **Thirty Year Rate**, which interest shall be calculated and compounded semi-annually (not in advance) and shall be payable semi-annually from and after the date of the interest rate conversion to the **Thirty Year Rate**. Every six (6) months, commencing on the date that is six

(6) months after the date of the interest rate conversion to the **Thirty Year Rate**, **Hydro** shall issue an invoice to the **Limited Partnership** for the interest amount owed to **Hydro** by the **Limited Partnership** on such **Interconnection Credit Advances**.

- (c) On the **Completion Date**, the interest rate on the aggregate amount of all **Interconnection Credit Advances** advanced after the last **Interconnection Credit Facility Interest Rate Conversion Date** to occur and then remaining outstanding and subject to the **Floating Rate**, shall for the purpose of including same in the calculation of the **Interconnection Credit Project Rate** have a fixed interest rate attributed to those **Interconnection Credit Advances** (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** in effect on the **Completion Date**.
- (d) On the **Completion Date**, the **Interconnection Credit Advances** then outstanding shall until the twenty-fifth anniversary of the **Completion Date** bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Interconnection Credit Project Rate** as determined on the **Completion Date**. **Hydro** shall, within two (2) **Business Days** of the interest rate conversion, provide the **Limited Partnership** with notice of the **Interconnection Credit Project Rate** and its supporting calculations therefore, which shall constitute, in the absence of error, prima facie evidence of the **Interconnection Credit Project Rate**. **Hydro** shall notify the **Limited Partnership** of the semi-annual blended principal and interest payment determined pursuant to section 2.5(3) which is payable on the **Total Outstandings** due under the **Interconnection Credit Facility** based on the **Interconnection Credit Project Rate**. The blended principal and interest payment shall be payable semi-annually from and after the **Completion Date**. Every six (6) months, commencing on the date that is six (6) months after the **Completion Date**. **Hydro** shall issue an invoice to the **Limited Partnership** for the principal and interest amounts owed to **Hydro** by the **Limited Partnership** hereunder.
- (e) Each **Interconnection Credit Advance** received by the **Limited Partnership** after the **Completion Date**, but prior to the twenty-fifth anniversary of the **Completion Date**, shall from the date of such **Advance** until the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000, bear interest at the **Floating Rate** in effect from time to time during that period. **Hydro** shall provide the **Limited Partnership** with notice of the **Floating Rate** applicable from time to time to each such **Advance** and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable by the **Limited Partnership** in respect of each such **Advance** based on the **Floating Rate** applicable from time to time to such **Advance**. Such interest will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall be payable monthly. **Hydro** shall issue an invoice to the **Limited Partnership** once per month for the interest amount owed to **Hydro** by the **Limited Partnership** hereunder.

- (f) On the day (if occurring prior to the twenty-fifth anniversary of the **Completion Date**) that the **Total Outstandings** under **Interconnection Credit Facility** referred to in (e) above and that are subject to the **Floating Rate** equals in the aggregate \$5,000,000 the **Interconnection Credit Advances** then outstanding and forming part of the said \$5,000,000 in aggregate principal amount shall until the twenty-fifth anniversary of the **Completion Date** bear interest at the **Interconnection Credit Project Rate**. **Hydro** shall, within two (2) **Business Days** of the interest rate conversion, provide the **Limited Partnership** with notice of the **Interconnection Credit Project Rate**. **Hydro** shall notify the **Limited Partnership** of the semi-annual blended principal and interest payment determined pursuant to section 2.5(4) which is payable on the **Interconnection Credit Advances**. The blended principal and interest payment shall be payable semi-annually from and after the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000. Every six (6) months, commencing on the date that is six (6) months after the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000, **Hydro** shall issue an invoice to the **Limited Partnership** for the principal and interest amounts owed to **Hydro** by the **Limited Partnership** hereunder.
- (g) On the twenty-fifth anniversary of the **Completion Date**, the **Interconnection Credit Advances** then outstanding shall thereafter bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** calculated by **Hydro** as of the twenty-fifth anniversary of the **Completion Date**. **Hydro** shall notify the **Limited Partnership** of the semi-annual blended principal and interest payment determined pursuant to section 2.5(5) which is payable on the **Total Outstandings** under the **Interconnection Credit Facility** and accrued and unpaid interest thereon based on the fixed interest rate determined pursuant to this section. The blended principal and interest payment shall be payable semi-annually from and after the twenty-fifth anniversary of the **Completion Date**. Every six (6) months, commencing on the date that is six (6) months after the twenty-fifth anniversary of the **Completion Date**, **Hydro** shall issue an invoice to the **Limited Partnership** for the principal and interest amounts owed to **Hydro** by the **Limited Partnership** hereunder.
- (h) Each **Interconnection Credit Advance** received by the **Limited Partnership** after the twenty-fifth anniversary of the **Completion Date**, shall from the date of such **Advance** until the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000, bear interest at the **Floating Rate** in effect from time to time during that period. **Hydro** shall provide the **Limited Partnership** with notice of the **Floating Rate** applicable from time to time to each such **Advance** and its supporting calculations therefore. **Hydro** shall notify the **Limited Partnership** of the interest payable by the **Limited Partnership** in respect of each such **Advance** based on the **Floating Rate** applicable from time to time to such **Advance**. Such interest will be calculated on the basis of monthly compounding (not in advance) and the actual number of days elapsed, and shall



be payable monthly. **Hydro** shall issue an invoice to the **Limited Partnership** once per month for the interest amount owed to **Hydro** by the **Limited Partnership** hereunder.

- (i) On the day that the **Total Outstandings** under the **Interconnection Credit Facility** referred to in (h) above and that are subject to the **Floating Rate** equals in the aggregate \$5,000,000 the **Interconnection Credit Advances** then outstanding and forming part of the said \$5,000,000 in aggregate principal amount shall thereafter bear interest at a fixed interest rate (expressed as a percentage rate per annum) equal to the **Thirty Year Rate** calculated by **Hydro** as of the twenty-fifth anniversary of the **Completion Date**. **Hydro** shall notify the **Limited Partnership** of the semi-annual blended principal and interest payment determined pursuant to section 2.5(6) which is payable on the **Total Outstandings** under the **Interconnection Credit Facility** and accrued and unpaid interest thereon based on the fixed interest rate determined pursuant to this section. The blended principal and interest payment shall be payable semi-annually from and after the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000. Every six (6) months, commencing on the date that is six (6) months after the day that the **Total Outstandings** under the **Interconnection Credit Facility** that are subject to the **Floating Rate** equals in the aggregate \$5,000,000, **Hydro** shall issue an invoice to the **Limited Partnership** for the principal and interest amounts owed to **Hydro** by the **Limited Partnership** hereunder.

### **3.7 Variable Rates of Interest**

With every change in a rate component for determining any variable rate of interest payable under this **PFA**, there shall be a corresponding change in the applicable variable rate of interest payable under this **PFA** based on the change in such rate component, all without necessity of prior notice thereof to the **Limited Partnership** or to any **Person**.

### **3.8 Prohibition on Conversions**

Except with **Hydro's** prior written consent, the **Limited Partnership** shall not be entitled to convert an **Advance** from one **Type of Advance** to another. The **Limited Partnership** shall however be permitted to use an **Advance** under the **Non-Revolving Credit Facility** to repay an **Advance** under the **Revolving Credit Facility**.

### **3.9 Interest during a Construction Halt**

**Hydro** agrees that commencing on the date that construction is halted pursuant to section 8.1.6 of the **JKDA** and up to the date, if any, when construction is restarted pursuant to section 8.1.8 of the **JKDA**, all interest charges under the **Non-Revolving Credit Facility** and **Revolving Credit Facility** shall be suspended, without prejudice to the rights of either party to this **PFA** under this **PFA** but for such suspension of interest during such time period.

### **3.10**            **Evidence of Debt and Determination of Interest Rates**

- (1)            The indebtedness of the **Limited Partnership** in respect of all **Advances** hereunder shall be evidenced by the account records maintained by **Hydro**. The failure of **Hydro** to correctly record any amount or date shall not, however, affect the obligation of the **Limited Partnership** to pay amounts due hereunder to **Hydro** in accordance with this **PFA**.
  
- (2)            For purposes of the *Interest Act* (Canada):
  - (a)            whenever any interest or fee under this **PFA** is calculated using a rate based on a period of time other than a calendar year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (a) the applicable rate based on such period of time multiplied by (b) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (c) the number of days in such period of time;
  - (b)            the principle of deemed reinvestment of interest shall not apply to any interest calculation under this **PFA**; and
  - (c)            the rates of interest stipulated in this **PFA** are intended to be nominal rates and not effective rates or yields.
  
- (3)            Within thirty (30) days of **Hydro**'s fiscal year end **Hydro** shall provide to the **Limited Partnership** a written statement setting out for that fiscal year with respect to each **Credit Facility**:
  - (a)            the **Total Outstandings** under the **Credit Facilities** and all accrued and unpaid interest thereon as at the end of **Hydro**'s fiscal year;
  - (b)            opening balances;
  - (c)            **Advances** provided during **Hydro**'s fiscal year;
  - (d)            **Advances** repaid during **Hydro**'s fiscal year, including interest payments;
  - (e)            applicable interest rates, as at the end of **Hydro**'s fiscal year; and
  - (f)            the date, if applicable, interest rates were changed from floating to fixed rates.

**ARTICLE 4**  
**CONDITIONS OF LENDING**

**4.1**            **Conditions Precedent to Initial Advances**

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

- (1)            **Deliveries.** **Hydro** shall have received, at or prior to the time of the making of any **Advances** on the **Initial Closing Date** the following, each dated such day as is satisfactory to **Hydro** and in form and substance satisfactory to **Hydro** and its counsel acting reasonably:
  - (a)            the **Security Documents** creating a first charge security interest, subject to the **Permitted Liens**, on all of the **Property** of the **Limited Partnership** and securing the **Obligations**, duly executed by the **General Partnership** on behalf of the **Limited Partnership** and where applicable, duly executed by the **General Partner** in its personal capacity;
  - (b)            evidence of the registration and perfection of the **Security Documents** in all offices where such registration, filing or recording is necessary or desirable to protect any rights or remedies of **Hydro** thereunder; and
  - (c)            such other certificates and documentation as **Hydro** may reasonably require to give effect to this **PFA**.
- (2)            **Consents and Authorizations.** **Hydro** has received all **Authorizations** it requires for the due performance by **Hydro** of the **Loan Documents**, which as of the date of this **PFA** consist of the **Authorizations** listed in Appendix E. **Hydro** covenants and agrees to use its best efforts to obtain such **Authorizations**.
  - (a)            **Joint Keeyask Development Agreement.** All of the conditions set forth in Article 16 of the **JKDA** shall have been fulfilled or performed.
- (3)            **Other Conditions.** The conditions set forth in section 4.2 shall have been fulfilled or performed.

**4.2**            **Conditions of All Advances**

At any time, the obligation of **Hydro** to make an **Advance** under the **Credit Facilities** is subject to the following conditions being satisfied on the date of such **Advance**, and after giving effect thereto and to the application of proceeds therefrom, which conditions are for

the exclusive benefit of **Hydro** and may be waived in whole or in part by **Hydro**, in its sole discretion:

- (1) **Credit Facility Commitment Limit.** The **Total Outstandings** under the **Credit Facility** and all accrued and unpaid interest thereon in respect of which the **Advance** is requested in the **Borrowing Notice** shall not prior to or after giving effect to the **Advance**, exceed the **Credit Facility Commitment** for such **Credit Facility**.
- (2) **Truth of Representations and Warranties.** The representations and warranties of the **Limited Partnership** contained in the **Loan Documents** to which it is a party and of the **General Partner** in any **Loan Documents** to which it is a party in its personal capacity, shall be true and correct as of the date on which the **Advance** is made with the same force and effect as if such representations and warranties had been made on and as of such date; provided that, to the extent the disclosure in the representations and warranties is no longer true and correct, the **Limited Partnership** or the **General Partner** shall be entitled to update such disclosure to **Hydro**, provided that if such disclosure is materially adverse it must be approved by **Hydro**.
- (3) **Performance of Covenants.** The **General Partner** (as general partner for and on behalf of the **Limited Partnership**) and, where applicable, in its personal capacity, shall have fulfilled or complied with all covenants herein contained or contained in any other **Loan Documents** to be performed or caused to be performed by it at or prior to the date of the **Advance**.
- (4) **No Event of Default.** No **Event of Default** shall have occurred and be continuing.
- (5) **Consents and Authorizations.** All **Authorizations** shall have been obtained by **Hydro**, in order to permit the **Advance** to be made on the terms and conditions set out in this **PFA**, which as of the date of this **PFA** consist of the **Authorizations** listed in Appendix E. **Hydro** covenants and agrees to use its best efforts to obtain such **Authorizations**.
- (6) **No Change in Laws.** No **Law** or any change in any **Law** shall have been introduced, enacted or announced, the effect of which will be to prohibit **Hydro** from making the **Advance**.
- (7) **Borrowing Notice.** **Hydro** shall have received or shall have been deemed to receive a **Borrowing Notice** pursuant to and in compliance with this **PFA**.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

**5.1           Representations and Warranties**

To induce **Hydro** to make **Advances** available hereunder, the **Limited Partnership** represents and warrants to **Hydro** that each of the following representations and warranties is true and correct:

(1)           **Status and Power.**

- (a)       The **Limited Partnership** is a limited partnership duly organized and validly subsisting as a limited partnership in good standing under the **Laws** of the Province of Manitoba and has full partnership power and capacity to own its **Property** and to carry on its **Business**, through the **General Partner**. The **Limited Partnership** is duly registered to carry on business in the Province of Manitoba; and
- (b)       The **General Partner** is a corporation duly incorporated and organized, validly subsisting under the **Laws** of the Province of Manitoba and has full corporate power and capacity to own its property and carry on its business and to act as the general partner of the **Limited Partnership**. The **General Partner** is duly registered to act as the general partner of the **Limited Partnership**.

(2)           **Authorization.**

- (a)       The **General Partner** has full power and capacity and full legal right to enter into and perform, as general partner for and on behalf of the **Limited Partnership**, the obligations of the **Limited Partnership** under this **PFA** and under all other **Loan Documents** and has, or will have by **Initial Closing**, taken all action necessary to be taken by it to authorize such acts; and
- (b)       The **General Partner** has full power and capacity and full legal right, in its personal capacity, to enter into and perform its obligations under all of the **Loan Documents** to which it is or will be a party in its personal capacity, and has or will have by **Initial Closing** taken all action necessary to be taken by it to authorize such acts.

(3)           **Enforceability of Agreement.**

- (a)       This **PFA** and each other **Loan Document** to which the **Limited Partnership**, is a party constitutes legal, valid and binding obligations of the **Limited Partnership** enforceable against the **Limited Partnership** in accordance with their respective terms, subject only to any limitation under applicable **Laws** relating to

- (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and
  - (ii) the discretion that a court may exercise in the granting of equitable remedies;
- (b) Any **Loan Documents** to which the **General Partner** in its personal capacity is a party constitutes legal, valid and binding obligations of the **General Partner** enforceable against the **General Partner** in accordance with their respective terms, subject only to any limitation or applicable **Laws** relating to
  - (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and
  - (ii) the discretion that a court may exercise in the granting of equitable remedies.
- (4) **Litigation.** There is no judgment, order, writ, injunction, decree or award of any court, arbitrator, board or other **Governmental Entity** which would prevent the **Limited Partnership** or the **General Partner** as general partner for and on behalf of the **Limited Partnership** or, where applicable, in its personal capacity from performing its obligations under this **PFA** or any other **Loan Document** to which it is a party.
- (5) **Title to Property.** The **Limited Partnership** is the sole beneficial owner of and has a good and beneficial title to and will be lawfully possessed of its **Property**, including the **Collateral**, free and clear of all **Liens**, except **Permitted Liens**, and the **General Partner** for and on behalf of the **Limited Partnership** has full right to mortgage, pledge, charge and assign to **Hydro** the **Collateral** mortgaged, pledged, charged or assigned to **Hydro** pursuant to the **Security Documents** as contemplated herein.
- (6) **No Event of Default.** No **Event of Default** has occurred, nor has any event or condition occurred which, with the giving of notice or passage of time, or both, would constitute an **Event of Default** under this **PFA** or any of the other **Loan Documents**.

Each of the representations and warranties contained in this section 5.1 shall be deemed to be continually repeated by the **Limited Partnership** at the time of each **Advance**.

## **5.2 Survival of Representations and Warranties**

All the representations and warranties of the **Limited Partnership** contained in section 5.1 shall survive the execution and delivery of this **PFA** and shall continue in full force and effect until all amounts owing hereunder have been repaid and the **Credit Facilities** have been terminated notwithstanding any investigation made at any time by or on behalf of **Hydro**.

### 5.3 Representations by Hydro

To induce the **Limited Partnership** to enter into this **PFA**, **Hydro** represents and warrants to the **Limited Partnership** that each of the following representations and warranties is true and correct.

- (1) **Hydro** is a corporation duly incorporated and organized and validly subsisting under the **Laws** of the Province of Manitoba and has the corporate power and authority to enter into this **PFA** and to perform its obligations hereunder, subject to the provisions of the **Hydro Act**. As of the date of this **PFA** the applicable provisions of the **Hydro Act** limiting **Hydro's** power and authority are those listed in Appendix F.
- (2) This **PFA** has been duly authorized, executed and delivered by **Hydro** and is a legal, valid and binding obligation of **Hydro** enforceable against **Hydro** by the **Limited Partnership** in accordance with its terms, except as enforcement may be limited by the provisions of the **Hydro Act**, and by bankruptcy, insolvency and other **Laws** affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction. As of the date of this **PFA** the applicable provisions of the **Hydro Act** limiting enforceability are those listed in Appendix F.

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

### 5.4 Survival of Representations and Warranties

All the representations and warranties of **Hydro** contained in section 5.3 shall survive the execution and delivery of this **PFA** and shall continue in full force and effect until all amounts owing hereunder have been repaid the **Limited Partnership** and **Credit Facilities** have been terminated, notwithstanding any investigation made at any time by on behalf of the **Limited Partnership**.

**ARTICLE 6**  
**COVENANTS OF THE LIMITED PARTNERSHIP**

**6.1**      **Affirmative Covenants**

So long as any amount owing under the **Loan Documents** remains unpaid or **Hydro** has any **Credit Facility Commitment** under this **PFA**, and unless **Hydro** shall otherwise consent, the **Limited Partnership** shall:

- (1)      **Protect Hydro's Liens.** At all times take all action and supply **Hydro** with all information necessary to allow **Hydro** to create, maintain, perfect, protect and preserve the **Liens** provided for under the **Security Documents** and confer upon **Hydro** the security interest intended to be created thereby.
- (2)      **Payments.** Pay all amounts of principal, interest, costs and expenses and deposits on the dates, at the times and at the places specified in this **PFA** or under any other **Loan Document**.
- (3)      **Use of Proceeds.** Apply the proceeds of the **Credit Facilities** only in accordance with section 2.3 or as otherwise expressly permitted by **Hydro**.
- (4)      **Insurance**
  - (a)      Cause the insurance proceeds under all policies maintained by the **Limited Partnership** to be made payable to **Hydro** as loss payee as its interests may appear and otherwise deal with such policies in such manner as to enable all insurance proceeds payable thereunder in respect of the **Collateral** or otherwise to be paid to and collected by **Hydro**. **Hydro** shall be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure. The net proceeds received by **Hydro** (after deducting any expenses incurred in a collection or handling of such proceeds) under any property insurance policies shall be applied as follows:
    - (i)      if an **Event of Default** shall have occurred and is continuing, the entire net proceeds of any insurance claim received by **Hydro** shall, at the option of **Hydro**, be applied towards repayment of the **Credit Facilities** whether then due or not without any prepaid penalty; or
    - (ii)     if no **Event of Default** shall have occurred and be continuing and so long as (A) the insurance proceeds are sufficient to fully restore the **Collateral**, and (B) the **Limited Partnership** is able, whether from proceeds of business interruption insurance or otherwise, to continue to make the principal and interest payments owing hereunder when due and payable, then the net proceeds of any claim of less than \$1,000,000 shall be released to the **Limited Partnership** to be used solely for repairing and



restoring the **Collateral** which is subject to the claim (or claims), (unless otherwise agreed to by **Hydro** and the **Limited Partnership**) and the net proceeds of any claim of more than \$1,000,000 shall be held by **Hydro** for the benefit of the **Limited Partnership** and shall be advanced from time to time, but not more often than weekly, against a requisition or other evidence of restoration or repair of the **Collateral** which is subject to the claim (or claims), including architects' or engineers' certificates and copies of invoices for work and materials used in connection therewith, as **Hydro** may, in its sole discretion, reasonably require. In no event, however, shall any advance of any such proceeds be made which will result in the funds remaining with **Hydro** or payable to **Hydro** under the policies being less than the cost of completion or restoration of the **Collateral** as estimated by an architect or engineer satisfactory to **Hydro**. If, upon completion of restoration of the **Collateral**, there remain funds with **Hydro**, **Hydro** shall release the remaining funds to the **Limited Partnership**.

- (b) Proceeds of liability insurance shall be paid to the **Limited Partnership** for the purposes of settling the claim relating thereto or otherwise as required by any settlement, court order or conditions of the insurer and the proceeds of business interruption insurance shall be paid to the **Limited Partnership**; provided that such proceeds are used to carry on the **Business** or otherwise in accordance with this section 6.1(4).

(5) **Deposit for Debt Retirement**

- (a) The **Limited Partnership** shall deposit with **Hydro** in each fiscal year of **Hydro** during the term of this **PFA**, commencing with the **Hydro** fiscal year in which the **First Completion Date** falls within, an amount equal to the total of:
  - (i) the amount equal to one (1%) percent of the **Total Outstandings** with respect to the **Non-Revolver Credit Facility** and **Revolving Credit Facility** and all accrued and unpaid interest outstanding as at March 31 of the fiscal year of **Hydro** immediately preceding the fiscal year of **Hydro** in which the payment is to be made by the **Limited Partnership** pursuant to this section 6.1(5); plus
  - (ii) an amount equal to interest at the rate of four (4%) percent per annum on the balance of funds on deposit with **Hydro** including all accrued interest (as determined in accordance with this section 6.1(5)) as at March 31 in the fiscal year of **Hydro** immediately preceding the fiscal year of **Hydro** in which payment is to be made by the **Limited Partnership** pursuant to this section 6.1(5); less
  - (iii) an amount equal to the total interest, as determined in accordance with section 6.1(5)(b), which accrued on the balance of funds on deposit with **Hydro**, (excluding any interest amount which was paid or credited to the **Limited Partnership**) for that period of time from March 31 in the fiscal

year of **Hydro** immediately preceding the fiscal year of **Hydro** in which payment is to be made by the **Limited Partnership** pursuant to this section 6.1(5), to the date of the said payment.

- (b) The balance of funds on deposit with **Hydro** (as determined in accordance with this section 6.1(5)) shall accrue interest at the **Deposit for Debt Retirement Interest Rate** which shall be calculated and compounded semi-annually (not in advance) from and after the date of the first deposit made by the **Limited Partnership** pursuant to section 6.1(5)(a)(i). On March 31 of each **Hydro** fiscal year **Hydro** shall charge as a fee to the **Limited Partnership** an amount equal to the balance of funds on deposit with **Hydro** as at March 31 (as determined in accordance with section 6.1(5)), multiplied by the rate (expressed as a percentage rate per annum) charged as at the said March 31 date by **Manitoba** to **Hydro** as a fee for the servicing and management of **Hydro's** sinking fund reserves and the said funds on deposit with **Hydro** shall be reduced by the amount of this fee.
  - (c) If it is determined by **Hydro** that prior to the **Maturity Date** the balance of funds on deposit with **Hydro** (as determined in accordance with this section 6.1(5) including accrued and unpaid interest) exceeds the **Total Outstandings** (including all accrued and unpaid interest) with respect to the **Non-Revolving Credit Facility** and **Revolving Credit Facility** and all other amounts owing to **Hydro** under each of those **Credit Facilities** then the balance of funds on deposit with **Hydro** shall be used to repay the **Total Outstandings** in respect of the **Non-Revolving Credit Facility** and the **Revolving Credit Facility**, including all accrued and unpaid interest and all other amounts owing to **Hydro** under each of those **Credit Facilities** and any remaining balance shall be paid to the **Limited Partnership**. The **Non-Revolving Credit Facility** and the **Revolving Credit Facility** shall be terminated as part of this repayment.
  - (d) The balance of funds otherwise on deposit with **Hydro** (as determined in accordance with this section 6.1(5)) shall be used to offset the amount owing to **Hydro** under the provisions of the **Non-Revolving Credit Facility** and **Revolving Credit Facility**:
    - (i) on the twenty-fifth **Anniversary Date**;
    - (ii) on the **Maturity Date**; or
    - (iii) under the provisions of the **Loan Documents** where **Hydro** has demanded repayment of the indebtedness of the **Limited Partnership** after an **Event of Default** has occurred and is continuing, and the obligations of **Hydro** under the **Credit Facilities** have terminated in accordance with the provisions of the **Loan Documents**, with such amount to be applied in accordance with the provisions of section 9.3.
- (6) **Guarantee Fee.** The **Limited Partnership** shall pay to **Hydro** on April 15 in each fiscal year of **Hydro** during the term of this **PFA** an amount determined according to the following formula:

A x B

where,

A is the **Guarantee Fee**, as at 10:00 a.m. (Winnipeg time), on March 31 of the immediately preceding fiscal year of **Hydro**; and

B is the **Total Outstandings** with respect to the **Credit Facilities**, as at 10:00 a.m. (Winnipeg time), on March 31 of the immediately preceding fiscal year of **Hydro**.

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

## 6.2 Negative Covenants

So long as any amount owing under the **Loan Documents** remains unpaid or **Hydro** has any **Credit Facility Commitment** under this **PFA** and unless **Hydro**, as the case may be, shall otherwise consent, the **Limited Partnership** agrees not to create, incur, assume or suffer to exist, any **Lien** on any of its **Property** other than **Permitted Liens**.

## 6.3 Financial Covenants

So long as any amount owing under the **Loan Documents** remains unpaid or **Hydro** has any **Credit Facility Commitment** under this **PFA**, and unless **Hydro** shall otherwise consent, the **Limited Partnership** agrees that:

- (1) The **Debt Ratio** shall not be permitted at any time prior to the **Final Closing Date** to exceed seventy-five (75%) percent (rounded to the nearest percentage point).
- (2) The **Debt Ratio**, may increase up to eighty-five (85%) percent (rounded to the nearest percentage point) during the **Initial Operating Period** subject to the following provision:
  - (a) if any of the unaudited monthly financial statements of the **Limited Partnership**, or the audited financial statements of the **Limited Partnership** for any financial year discloses that the **Debt Ratio** has increased beyond eighty-five (85%) percent (rounded to the nearest percentage point) the **Debt Ratio** shall be reduced to no greater than eighty-five (85%) percent within thirty-five (35) calendar days of the date the financial statements are approved by the board of the **General Partner**.
- (3) The **Debt Ratio** shall be reduced to seventy-five (75%) percent (rounded to the nearest percentage point) at the termination of the **Initial Operating Period** and

shall not exceed seventy-five (75%) during the remaining term of the **PFA** subject to the following provision:

- (a) if any of the unaudited monthly financial statements of the **Limited Partnership**, or the audited financial statements of the **Limited Partnership** for any financial year discloses that the **Debt Ratio** has increased beyond seventy-five (75%) percent (rounded to the nearest percentage point) the **Debt Ratio** shall be reduced to no greater than seventy-five (75%) percent within thirty-five (35) calendar days of the date the financial statements are approved by the board of the **General Partner**.
  
- (4) For greater certainty at no time shall **Distributions** be made which shall cause the **Debt Ratio** to exceed seventy-five (75%) percent except for **Distributions** to the holders of **Class K Preferred Units**.

## ARTICLE 7 SECURITY

### 7.1 Security

The **General Partner** shall have executed and delivered for and on behalf of the **Limited Partnership** the **Security Documents** to which it is a party and the **Limited Partnership** shall have caused the **General Partner**, in its personal capacity, to execute and deliver the **Security Documents** to which it is a party in its personal capacity, in form and substance satisfactory to **Hydro**, acting reasonably, as and when required hereunder or under the **Loan Documents** to which either is a party, as continuing collateral security for the due, prompt and complete payment, performance and satisfaction by the **Limited Partnership** of all of its indebtedness, liabilities and obligations of every nature whatsoever, whether present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time due or accruing due, wheresoever and howsoever incurred, including any ultimate unpaid balance thereof, in any currency, and whether incurred prior to, at the time of or subsequent to the execution of this **PFA**, to **Hydro**, in connection with this **PFA** and the **Loan Documents** (the “**Obligations**”).

### 7.2 Registrations

- (1) **Hydro** in its sole discretion, may register, file or record the **Liens** constituted by the **Security Documents** in all jurisdictions where such registration, filing, or recording is necessary or of advantage to the creation, perfection, preservation or protection of such **Liens**. The **Limited Partnership** acknowledges **Hydro** has the right to require that the form of the **Security Documents** be revised where such changes are required to enable **Hydro** to register, file or record the **Liens** constituted by the **Security Documents**.
- (2) **Hydro** may renew such registrations, filings and recordings from time to time as and when required or of advantage to **Hydro**, to keep them in full force and effect. The **Limited Partnership** acknowledges that the forms of the **Security Documents** have been prepared based upon the **Laws** of the jurisdictions indicated therein as being applicable thereto in effect at the date hereof and that such **Laws** may change. The **Limited Partnership** agrees that, following prior notice to and consultation with the **Limited Partnership**, **Hydro**, shall have the right to require that the forms of the **Security Documents** be amended, restated or supplemented, at the expense of the **Limited Partnership**, to reflect any changes in such **Laws**, whether arising as a result of statutory amendments or court decisions or other similar changes, in order to confer upon **Hydro** the **Liens** intended to be created thereby, in the sole discretion of **Hydro**.

**ARTICLE 8**  
**EVENTS OF DEFAULT**

**8.1**            **Events of Default**

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

- (a)    the **Limited Partnership** shall fail to pay any portion of the principal or interest or any costs or expenses or other amounts due hereunder or under any of the other **Loan Documents** on the date when such amounts are due hereunder or thereunder, including the deposit of the amounts referred to in section 6.1(5) and such amount remains unpaid or has not been deposited for a period of ten (10) **Business Days** after **Hydro** notifies the **Limited Partnership** that the amount is overdue;
- (b)    the **Limited Partnership** or the **General Partner** in its personal capacity shall fail to perform or observe any other material term, covenant or agreement contained in any of the **Loan Documents** on its part to be performed or observed and such failure shall remain unremedied for twenty (20) **Business Days** after written notice thereof shall have been given to the **Limited Partnership** by **Hydro**; provided that the twenty (20) day period may be extended by **Hydro** in its unfettered discretion, where the **Limited Partnership** demonstrates to **Hydro** that the breach is not capable of being cured within twenty (20) **Business Days** but provides **Hydro**, within twenty (20) **Business Days**, with a plan for curing the breach within sixty (60) calendar days and in good faith implements such plan;
- (c)    any of the **Loan Documents**, at any time, is not or ceases to be valid or enforceable in whole or in material part, or if any **Lien** intended to be created by any of the **Security Documents** is not or ceases to be a valid and perfected **Lien** having the ranking or priority contemplated thereby, or if the validity or enforceability of any of the **Loan Documents** or the validity or perfection of any such **Lien** shall be contested by any party thereto or any other **Person** (unless such contestation by such other **Person** is being opposed diligently, in good faith and by proper legal proceedings by the **Limited Partnership** and **Hydro** is provided with an opinion, reasonably satisfactory to **Hydro**, of counsel to the **Limited Partnership** confirming the validity and enforceability of such **Loan Document** and/or the validity and perfection of the contested **Lien**, as the case may be), or if any **Person** (other than **Hydro**) obtains any interest in the **Collateral** or any part thereof, except for **Permitted Liens** or pursuant to sales in the ordinary course of business;
- (d)    the **Limited Partnership** shall:

- (i) file a **Notice** of intention to file a proposal under any **Law** relating to bankruptcy, insolvency or reorganization or relief of debtors; or
  - (ii) institute or have instituted against it any proceeding, by a **Person** other than **Hydro**, seeking (a) to adjudicate it a bankrupt or insolvent, (b) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any **Law** relating to bankruptcy, insolvency or reorganization or relief of debtors, or (c) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of its **Property**, and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within thirty (30) calendar days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its **Property**) shall occur; or
  - (iii) take any action to authorize any of the foregoing actions;
- (e) a **Notice** is sent to the **Limited Partnership** or the **General Partner** from any creditor with respect to the intention of such creditor to enforce a **Lien** on any of the **Collateral** unless such **Notice** is being contested in good faith by appropriate legal proceedings and such **Notice** has not resulted in, or does not involve, any immediate danger of the sale, forfeiture or loss of any of the **Collateral** that is the subject of such **Notice**;
  - (f) the **Limited Partnership** does not conduct all or a material part of the **Business** for a continuous period of time of two (2) years as a consequence of or resulting from the loss or suspension of any **Material Governmental Licence** held by the **Limited Partnership** or any agreement to which the **Limited Partnership** is a party; or
  - (g) the **Limited Partnership** does not conduct all or a material part of the **Business** for a continuous period of time of two (2) years as a consequence of or resulting from an order of any **Governmental Entity**, arbitrator or board;

then, and in any such event, **Hydro** shall be entitled, by written notice to the **Limited Partnership**:

- (h) to terminate the obligation of **Hydro** to make further **Advances** under the **Credit Facilities**; and/or
- (i) demand repayment of all indebtedness of the **Limited Partnership** to **Hydro** under the **Credit Facilities**;

whereupon the principal amount of all outstanding **Advances** all interest accrued thereunder, and all fees and other amounts payable thereunder shall become forthwith due and payable, without

presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the **Limited Partnership**; and/or

- (j) enforce the **Liens** constituted by the **Security Documents** and any other security now or hereafter held by **Hydro**;

provided, however, that upon any **Event of Default** specified in section 8.1(d), the obligation of **Hydro** to make **Advances** hereunder shall automatically terminate and the principal amount of all outstanding **Advances** and all interest accrued hereunder, and all fees and other amounts payable under this **PFA** shall automatically become forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the **Limited Partnership**. **Hydro** shall be required however to continue to make **Advances** under the **Interconnection Credit Facility** and under the **Revolving Credit Facility** (but not under the **Non-Revolving Credit Facility**) until written notice that an **Event of Default** has occurred has been provided to all parties to the **Interconnection and Operating Agreement**.

## 8.2 Expense of Hydro

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

- (a) any remedial action taken pursuant to this section 8.2;
- (b) any obligation of the **Limited Partnership** or the **General Partner** to **Hydro** hereunder or under any other **Loan Documents**; or
- (c) the realization of the **Collateral**, including all reasonable fees, court costs, receiver's or agent's remuneration, legal fees and expenses and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment of the **Collateral**, in all cases shall be added to and form a part of the **Obligations**.

## 8.3 Right to Combine and Set Off

Upon the occurrence and during the continuance of any **Event of Default**, **Hydro** is hereby authorized at any time and from time to time, to the fullest extent permitted by **Law**, to combine, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by **Hydro** to or for the credit or the account of the **Limited Partnership** with or against any and all of the obligations of the **Limited Partnership** now or hereafter existing under any of the **Loan Documents**, irrespective of whether or not **Hydro** shall have made any demand under any of the **Loan Documents** and although such obligations may be unmatured. **Hydro** agrees promptly to notify the **Limited Partnership** after any such combination or set off and application made by **Hydro**; provided that the failure to give such notice shall not affect the validity of such combination or set off and application. The rights of **Hydro** under this section are in addition to other rights and remedies (including other rights of combination and set off) which **Hydro** may have.



#### **8.4            Remedies Cumulative**

The remedies provided for in this **PFA** and each other **Loan Document** are cumulative and do not exclude any other right or remedy provided by **Law**.

**ARTICLE 9**  
**PAYMENTS, COMPUTATIONS AND INDEMNITIES**

**9.1**            **Timing of Payments**

Unless otherwise expressly provided in this **PFA**, the **Limited Partnership** shall make any payment required to be made by it to **Hydro** by depositing the amount of such payment in the bank account of **Hydro** designated for such purpose by **Hydro**, as applicable, on or before 11:00 a.m. (Winnipeg time) on the date such payment is due. The **Limited Partnership** shall pay **Hydro's** monthly and semi-annual interest invoices within five (5) **Business Days** following the receipt of the invoice. Interest invoices received by the **Limited Partnership** prior to 4:00 p.m. (Winnipeg time) on any **Business Day** will be deemed to be received on that day. Interest invoices received on any non-**Business Day** or after 4:00 p.m. (Winnipeg time) on any **Business Day** shall have been deemed to have been received by the **Limited Partnership** on the first **Business Day** that follows.

**9.2**            **Overdue Amounts**

All amounts owed by the **Limited Partnership** to **Hydro** which are not paid when due (whether at stated maturity, on demand, by acceleration or otherwise) shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times, to the corresponding **Thirty Year Rate** or **Interconnection Credit Project Rate** if established at that time for the overdue amount, or if applicable, the rate established pursuant to section 3.4(e). In the event any of the said rates have not being established at the applicable date, the applicable amounts shall bear interest at the **Floating Rate**.

**9.3**            **Application of Payments, Repayments and Prepayments**

All amounts received by **Hydro** from or on behalf of the **Limited Partnership**, including from realization by **Hydro** on the **Collateral**, and not previously applied pursuant to this **PFA** shall be applied by **Hydro** as follows:

- (a) first, in reduction of the **Limited Partnership's** obligation to pay any costs, expenses or reimbursable amounts which are due and owing to **Hydro**;
- (b) second, in reduction of the **Limited Partnership's** obligation to pay any unpaid interest accrued on the principal amount of **Advances** or on any other amount owing hereunder;
- (c) third, in reduction of the **Limited Partnership's** obligation to pay any amounts due and owing on account of the principal amount of all **Advances**;
- (d) fourth, in reduction of any other obligation or amount owing to **Hydro** under this **PFA** or under any of the other the **Loan Documents**; and

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

#### **9.4 Computations of Interest and Fees**

- (1) All computations of interest shall be made by **Hydro** taking into account the actual number of days occurring in the period for which such interest is payable pursuant to Article 3 except where interest is calculated and compounded semi-annually (in which case the computation of interest shall be made based on the semi-annual interest computation and not the number of days in the six month period) and on the basis of a year of 365 days.
- (2) Notwithstanding any provision to the contrary contained in this **PFA**, in no event shall the aggregate “interest” (as defined in section 347 of the *Criminal Code* (Canada), as the same may be amended, replaced or re-enacted from time to time) payable under this **PFA** exceed the maximum amount of interest on the “credit advanced” (as defined in that section) under this **PFA** lawfully permitted under that section and, if any payment, collection or demand pursuant to this **PFA** in respect of “interest” (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be refunded to the **Limited Partnership**. For purposes of this **PFA**, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the relevant **Advance** is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of any dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by **Hydro** will be conclusive for the purposes of such determination.

#### **9.5 Costs and Expenses**

The **Limited Partnership** shall, whether or not the transactions hereby contemplated are consummated, pay all costs and expenses of **Hydro**, including, without limitation, administration costs and expenses, of **Hydro** and legal fees and expenses of **Hydro** in respect of the **Limited Partnership** and the preparation, execution, delivery, registration, filing, recording or enforcement of, and refinancing, renegotiation, waiver, amendment or restructuring, or ongoing administration of the **Credit Facilities** and of the **Loan Documents** (including the maintenance of the **Liens** provided for therein and all future registrations, filings, recordings and other actions in connection therewith).

#### **9.6 Change in Circumstances**

If there has been a change to the **Hydro Act** and **Hydro** is no longer required to reserve and set aside monies for sinking fund purposes in accordance with section 41 of the **Hydro Act** the obligation for the **Limited Partnership** to deposit funds in accordance with section 6.1(5) shall be terminated. The balance of funds on deposit with **Hydro** pursuant to section 6.1(5) shall in that event be used to first offset the **Total Outstandings** in respect of the

**Revolving Credit Facility** and second to offset the **Total Outstandings** in respect of the **Non-Revolving Credit Facility**.

**9.7 Indemnity for Transactional and Environmental Liability**

- (1) The **Limited Partnership** hereby agrees to indemnify, exonerate and hold **Hydro**, in its capacity as lender under this **PFA** and its officers, directors, employees, agents and other representatives as a result of **Hydro** being a lender under this **PFA** (collectively in this section 9.7(1) and in section 9.7(2), the “**Indemnified Parties**”) but for greater certainty does not extend to where **Hydro** is providing services under any other agreement, free and harmless from and against any and all third party claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection with **Hydro** being a lender under this **PFA** therewith (irrespective of whether such **Indemnified Party** is a party to the action for which such indemnification hereunder is sought), but for greater certainty not in its capacity as a party to any other agreement, and including reasonable legal fees and disbursements (collectively, in this section 9.7(1), the “**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the **Indemnified Parties** or any of them or, with respect to, or as a direct or indirect result of:
  - (a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any **Advances** obtained hereunder; or
  - (b) the execution, delivery, performance or enforcement of this **PFA** or any other **Loan Document**, except for such **Indemnified Liabilities** that a court of competent jurisdiction determines or rules to be on account of the relevant **Indemnified Party’s** gross negligence or wilful misconduct.
- (2) The **Limited Partnership** hereby further agrees to indemnify, exonerate and hold the **Indemnified Parties** free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection with **Hydro** being a lender under this **PFA** (irrespective of whether such **Indemnified Party** is a party to the action for which such indemnification hereunder is sought), and including reasonable legal fees and disbursements (collectively, in this section 9.7(2), the “**Indemnified Liabilities**”) paid, incurred or suffered by, or asserted against, the **Indemnified Parties** or any of them for, with respect to, or as a direct or indirect result of any environmental liabilities and costs that arise as a result of **Hydro** being a lender under this **PFA**.
- (3) All obligations provided for in this section 9.7(2) shall not be reduced or impaired by any investigation made by or on behalf of **Hydro**.
- (4) If, for any reason, the obligations of the **Limited Partnership** pursuant to this section 9.7 shall be unenforceable, the **Limited Partnership** agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under **Law**, except to the extent that a court of competent jurisdiction

determines such obligations arose on account of the gross negligence or wilful misconduct of any **Indemnified Party**.

## **9.8 Survival of Indemnities; Contribution**

- (1) The provisions of sections 9.7 and this section 9.8 shall survive the termination of this **PFA** and the repayment of all amounts owing pursuant to the **Loan Documents**. The **Limited Partnership** acknowledges that neither its obligation to indemnify, nor any actual indemnification by it, of **Hydro** hereunder in respect of legal fees and disbursements shall in any way affect the confidentiality or privilege relating to any information communicated by **Hydro** to its counsel.
- (2) If any provision in any of the **Loan Documents** providing for indemnification by the **Limited Partnership** (the “**Indemnitor**”) in favour of **Hydro** or any of the **Indemnified Parties** (as defined in section 9.7) (the “**Indemnitee**”) is found by reason of the occurrence of an event, other than the gross negligence or wilful misconduct of the **Indemnitee**, to be unenforceable by a court of competent jurisdiction in a final judgment that has become non-appealable, then the **Indemnitor** shall contribute to the amount paid or payable by the **Indemnitee** which is subject to the indemnification provision in such proportion as is appropriate to reflect not only the relative benefits received by the **Indemnitor** on the one hand and the **Indemnitee** on the other hand but also the relative fault of the **Indemnitor** and the **Indemnitee**. The rights of contribution herein provided shall be in addition to and not in derogation of any other right to contribution which the **Indemnitee** may have under this **PFA** or applicable **Laws**.

**ARTICLE 10  
GENERAL PROVISIONS**

**10.1**            **Notices**

- (1)            All notices provided for in this **PFA** or in the **Loan Documents** shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable addresses or facsimile numbers, as the case may be, set opposite the party's name in Appendix B hereto or at or to such other address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a **Business Day** and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the **Business Day** next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a **Business Day** and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the **Business Day** next following such date of transmission.
- (2)            Each **Borrowing Notice** shall be irrevocable and binding on the **Limited Partnership**. With respect to any **Borrowing Notice**, **Hydro** may act upon the basis of telephonic notice believed by it in good faith to be from the **Limited Partnership** prior to receipt of a **Borrowing Notice**.

**10.2**            **Time of the Essence**

Time shall be of the essence of this **PFA**.

**10.3**            **Third Party Beneficiaries**

Each party hereto intends that this **PFA** shall not benefit or create any right or cause of action in or on behalf of any **Person**, other than the parties hereto and the **Persons** contemplated in section 9.8, and no **Person**, other than the parties hereto and the **Persons** contemplated in section 9.8, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

**10.4**            **Enurement**

This **PFA** shall enure to the benefit of and be binding upon the parties to this **PFA** and their respective successors and permitted assigns. **Hydro** may assign this **PFA** to any

affiliate of **Hydro** provided that **Hydro** shall remain liable for any obligation not performed by such affiliate under this **PFA**.

#### **10.5**            **Counterparts**

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

#### **10.6**            **Non-Merger**

Except as otherwise expressly provided in this **PFA**, the covenants, representations and warranties of the parties contained in this **PFA** and the other **Loan Documents** shall not merge on and shall survive the **Initial Closing** and the making of any **Advance**, and notwithstanding the **Initial Closing** or **Advance**, or any investigation made by or on behalf of any party, shall continue in full force and effect. The making of any **Advance** shall not prejudice any right of one party against any other party in respect of anything done or omitted hereunder or under any of the other **Loan Documents** or in respect of any right to damages or other remedies.

#### **10.7**            **Waivers and Amendments**

Any term, covenant or condition of any of the **Loan Documents** may only be amended with the consent of the **Limited Partnership** and **Hydro**, or compliance therewith by the **Limited Partnership** may be waived (either generally or in a particular instance and either retroactively or prospectively) by **Hydro** and, in the event that any such amendment or waiver is approved by **Hydro**, the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as an **Event of Default**.

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

**KEYYASK HYDROPOWER LIMITED  
PARTNERSHIP, by its General Partner ●**

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

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

**THE MANITOBA HYDRO-ELECTRIC  
BOARD**

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

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