

SCHEDULE 1-2

CONSTRUCTION AGREEMENT

between

KEEYASK HYDROPOWER LIMITED PARTNERSHIP,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD.

DATED • , 2009.

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CONSTRUCTION AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this day of , 2009.

BETWEEN:

KEYYASK HYDROPOWER LIMITED PARTNERSHIP,

OF THE FIRST PART,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

OF THE SECOND PART.

WHEREAS in accordance with and subject to the terms of the **JKDA**, the parties thereto have agreed to the development of the **Keeyask Project** through the **Limited Partnership** to be called the Keeyask Hydropower Limited Partnership, using agreements between the **Limited Partnership** and **Hydro** to, among other things, construct as **Project Manager** the **Keeyask Project** in accordance with the provisions of this **Construction Agreement**;

AND WHEREAS the **Project Manager** has the human resources, the established systems, appropriate skills, experience and financial capacity required to plan, engineer, design and manage all aspects of construction and commissioning of the generating station and related facilities, the **Owner** wishes to retain it as provided herein;

THEREFORE the parties hereto agree as follows:

ARTICLE 1

SCOPE OF WORK AND RELATED WORKS

Definitions

1.01 The following terms, when the first letter is capitalized and the terms is in bold, shall have the respective meanings set out below, and grammatical variations of such terms shall have corresponding meanings, and where the first letter of the term is capitalized and the term is in bold but not set out below, that term shall have the meaning accorded to it in the **JKDA**:

“**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.

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

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

“**Construction Agreement**” means this agreement.

“**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** to the **JKDA**.

“**Force Majeure**” is defined in section 5.01 of this **Construction Agreement**.

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

“**JKDA**” means the Joint Keeyask Development Agreement dated • made between **TCN** and **War Lake** operating as **Cree Nation Partners, Fox Lake, York Factory** and **Hydro**.

“**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**.

“**Owner**” means the **Limited Partnership**.

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

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

“**Scope of Work**” means, in respect of the **Keeyask Project**:

- (a) all required planning, engineering, and designing;
- (b) the purchase of insurance;
- (c) award of the contracts for construction;
- (d) commissioning of each of the turbine / generators and associated works to be supplied and installed;
- (e) procurement, award and administration of related contracts including the **Identified Work Packages**; and
- (f) decommissioning of camps and the clean-up of the construction site;

in accordance with the terms and conditions of the **JKDA**.

Appendices

1.02 The following Appendices are attached to and form part of this **Construction Agreement**:

Appendix A	Supply Rates for Power
Appendix B	Form of Monthly Invoice
Appendix C	Format for Monthly Reports

Obligation

1.03 The **Project Manager** will carry out the **Scope of Work**.

Related Works

1.04 The **Scope of Work** under this **Construction Agreement**:

- (a) does include the construction of a temporary construction power substation and construction power distribution lines, as well as communication facilities; but
- (b) does not include construction of transmission lines and related works which transmission lines will carry power to the construction site.

ARTICLE 2

SCHEDULE FOR CONSTRUCTION

Construction Start Date

2.01 The **Project Manager** shall commence the **Scope of Work** on the date specified by the **Owner**, or on such other date as the parties hereto agree, and proceed to complete it, in accordance with the provisions of the **JKDA**.

Contractor Schedules

2.02 Detailed schedules for successive parts of the **Scope of Work** are to be developed by the **Project Manager** with construction contractors, manufacturers and suppliers as each is retained by the **Project Manager** to construct, supply, install or commission specific parts of the **Scope of Work**.

Completion Date for the Scope of Work

2.03 The parties agree to use their respective best efforts to achieve their common objective of completing the **Scope of Work** in approximately eight (8) years from the start of construction, subject to the **Owner's** right to halt construction in accordance with section 8.1.6 of the **JKDA**.

Final Completion Date

2.04 Obligations of the **Project Manager** under this **Construction Agreement** with respect to each of the turbine/generators shall be complete upon issuance by the **Project Manager** of the commissioning certificate for each of the turbine/generators to be supplied and installed for the **Keeyask Project**. The **Final Completion Date** shall be the date upon which the commissioning certificate is issued for the last of the turbine / generators. It is agreed that each of the turbine/generators will be commissioned separately and on the date a commissioning certificate is provided for each, the **Owner** shall take responsibility for such turbine /generator. Following the **Final Completion Date**, the **Project Manager** shall remain responsible for removing the camp, cleaning up the work site and responding to and assisting with, where it is reasonable to do so, any deficiency claims from the **Owner**, all of which shall be costs included in the **Scope of Work**, but for all other purposes the **Owner** shall take possession and operational control of the entire **Keeyask Project**.

ARTICLE 3

PROJECT MANAGER RESPONSIBILITIES

Plan, Design and Engineer the Project

3.01 The **Project Manager** shall be solely responsible hereafter for continuing the planning, designing, engineering and procurement required to complete the **Scope of Work**.

Licences

3.02 The **Project Manager** shall be responsible for obtaining all licences, permits, orders, authorizations and approvals required for the **Scope of Work**, except for the **Closing Licences** which shall be obtained by the **Owner**, and the **Project Manager** shall execute all aspects of the **Scope of Work** in accordance with, and shall maintain, all licences required throughout the term of this **Construction Agreement**, subject to any agreements that the **Owner** may enter into with respect to environmental monitoring as may be required pursuant to the terms of the **Closing Licences**.

Procurement for Specified Contracts

3.03 With respect to the **Identified Work Packages**, the **Project Manager** shall follow the processes and related terms for their allocation and negotiation as set out in the **JKDA**.

Supply of Construction Power

3.04 The **Project Manager** will contract with **Hydro** for the supply of the power required to complete the **Scope of Work** in accordance with the tariff in effect at the time. Schedule "A" of this **Construction Agreement** is the relevant tariff as of the date shown in Appendix "A".

Manage Construction of the Project

3.05 The **Project Manager** shall supervise, control and direct all aspects of the **Scope of Work** in accordance with this **Construction Agreement** and perform all statutory duties and ensure compliance with the obligations imposed on a 'prime contractor' in accordance with the provisions of *The Workplace Health and Safety Act* (Manitoba).

Costs, Deviations and Progress Billings

3.06 The **Project Manager** shall provide the **Owner** with timely updates of costs and the **Owner** shall use those updates to predict and arrange receipt of the funds necessary to meet the **Owner's** cash flow requirements hereunder.

Notice of Material Changes

3.07 The **Project Manager** shall forthwith inform the **Owner** when any aspect of the plan, design or engineering materially changes or actual costs for completion of the **Scope of Work** deviate materially from the **Project Manager's** estimate and current budget and/or of such material deviation from the current estimate of costs.

Monthly Reporting

3.08 The **Project Manager** shall prepare and provide written reports monthly to the **Owner**, in the form attached as Appendix "C" to this **Construction Agreement**, after the construction commences and throughout performance of the **Scope of Work**, except during any halt of construction. Prior to the resumption of construction following such halt, the **Project Manager** shall provide to the **Owner** updated summaries of costs and anticipated cash flow requirements.

Access

3.9 During construction, the **Owner** shall allow access to the construction site to the **Project Manager** and all of its contractors and to all studies and plans which it owns related to the initial planning, designing and engineering of the **Keeyask Project**.

Commissioning of Turbine / Generators

3.10 The **Project Manager** shall conduct all testing and have necessary revisions made to complete the satisfactory installation and commissioning of each of the turbine / generators and related equipment contemplated by the **Scope of Work**.

Commissioning Energy

3.11 The **Project Manager** shall measure and account to the **Owner** for all power produced in the commissioning of each turbine / generator through to the date a commissioning certificate is issued for each turbine / generator, in accordance with the **PPA** to be entered into between the **Owner** and **Hydro**. The energy so produced during commissioning is to be valued in accordance with the terms set out in the **PPA**.

Assignment of Warranties

3.12 The **Project Manager** shall ensure that all product, equipment and material warranties for components of the completed **Keeyask Generating Station** shall be assigned by contractors and any others to the **Owner** upon the **Final Completion Date** or such earlier date or dates as may be appropriate to facilitate enforcement of warranty claims.

ARTICLE 4

INVOICES

Submission of Invoices

4.01 The **Project Manager** shall prepare and submit invoices to the **Owner** at the end of each billing period (approximately 30 days) for costs incurred in the billing period in carrying out the **Scope of Work**, including an itemized account of the value expended for work, services, the **Project Manager's** overhead and for materials supplied, in the form of invoice attached as Appendix "B" to this **Construction Agreement**.

Pay Project Manager Invoices

4.02 The **Owner** shall pay the **Project Manager's** invoices within ten (10) **Business Days** following receipt without delay, deduction or set-off. Invoices received by the **Owner** prior to 4:00 p.m. **CST** on any **Business Day** will be deemed to have been received that day. Invoices received on any other day or after 4:00 p.m. **CST** on any **Business Day** shall be deemed to have been received by the **Owner** on the first **Business Day** that follows.

Owner's Credit

4.03 The **Owner** shall be entitled to a credit to be set out in the applicable invoices for all power produced during commissioning as provided in section 3.11 of this **Construction Agreement**.

ARTICLE 5

FORCE MAJEURE

No Liability for Either Party

5.01 Neither the **Owner** nor the **Project Manager** shall be deemed in default of this **Construction Agreement** where the failure to perform or the delay, as the case may be, in performing their respective obligations is due wholly or in part to a cause beyond their reasonable control, including but not limited to, unusual inclemency of weather, legal strikes or lockouts, unpreventable accident, war or delay caused by war, vandalism or malicious mischief, riot or civil commotion, lawful orders of civil or military authorities, acts of God, significant transportation delays or any other circumstances beyond the reasonable control of either the **Owner** or the **Project Manager**, as the case may be (such causes hereinafter called "**Force Majeure**").

Due Diligence

5.02 The party experiencing the **Force Majeure** shall exercise due diligence in endeavouring to overcome any **Force Majeure** impediment to its performance, but settlement of its labour difficulties shall be entirely within its discretion.

Notice Requirements

5.03 The party experiencing the **Force Majeure** shall promptly give oral notification to the other party. Such oral notification shall be confirmed in writing within five (5) days after such party has learned of the **Force Majeure** and every thirty (30) days thereafter, and such written notification shall give a full and complete explanation of the **Force Majeure** delay and its cause, the status of the **Force Majeure**, and the actions such party is taking and proposes to take to overcome the **Force Majeure**.

Cost Control and Payment Obligations

5.04 The party experiencing the delay shall undertake reasonable measures to remedy the **Force Majeure** to achieve minimum impact on the progress of the **Scope of Work** and the **Owner** will continue to reimburse costs actually incurred by the **Project Manager** hereunder including but in no way limited to all local wage and expense obligations incurred, all staff costs and expenses incurred for the transportation, lodging, demobilization, re-mobilization and additional administration associated with the relocation of the **Project Manager's** personnel on short or long term assignment resulting from the **Force Majeure**.

ARTICLE 6

SUSPENSION OR TERMINATION OF CONSTRUCTION

No Suspension of Payment for Costs

6.01 Suspension or termination of the **Scope of Work** for any reason or time period whatsoever at the direction of the **Owner** or due to **Force Majeure** shall not suspend or relieve the **Owner** of its obligation to pay the **Project Manager** for all actual costs reasonably incurred in the planning, development, design, engineering, construction, commissioning and preservation of the products of the **Scope of Work**.

Payment of Costs

6.02 All actual costs reasonably incurred by the **Project Manager** as a result of any such suspension or termination of the **Scope of Work** shall be paid by the **Owner** on a timely basis in accordance with the terms hereof.

ARTICLE 7

GENERAL PROVISIONS

Enurement

7.01 This **Construction Agreement** shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have executed this **Construction Agreement** as of the day and year first above written.

**KEEYASK HYDROPOWER LIMITED
PARTNERSHIP, by its General Partner,
• Manitoba Ltd.**

Per: _____

Per: _____

**THE MANITOBA HYDRO-ELECTRIC
BOARD**

Per: _____

Per: _____

**APPENDIX A
SUPPLY RATES FOR POWER USED IN CONSTRUCTION EFFECTIVE
AUGUST 1, 2004**

General Service Medium

Non-Residential: Utility-owned Transformation exceeding 200 kV.A
Tariff No. 2004-30

Monthly Basic Charge	\$27.65
Plus	
Energy Charge:	2.339¢/k.W.h
Plus	
Demand Charge*	\$8.32/k.V.A

Notes:

Minimum monthly bill is the Basic Charge plus Demand Charge
Primary metering of multiple Utility-owned transformation - add 2% to kV.A for each transformation greater than one.

Demand Charge is applied to the Monthly Billing Demand defined as the greater of the following expressed in kV.A:

- i. measured demand*
- ii. 70% of highest measured demand in the Billing Year** for the months of December, January, February.*
- iii. 25% of contract demand.*
- iv. 25% of the highest measured demand in any of the previous 12 months.*

**Billing year -Twelve monthly billing periods commencing with the month of December and ending the following November*

General Service Large

(Non-Residential: Customer-owned Transformation exceeding 750 V but NOT exceeding 30 kV)
Tariff No. 2004-60

Energy Charge:	2.196¢/kW.h
Demand Charge*:	\$7.089/kV.A.

Exceeding 30 kV but NOT exceeding 100 kV
Tariff No. 2004-61

Energy Charge:	2.138¢/kW.h
Plus	
Demand Charge*	\$6.051/kV.A

Exceeding 100 kV
Tariff No. 2004-62

Energy Charge	2.119¢/kW.h
Plus	
Demand Charge*	\$5.401/kV.A

Notes:

* Minimum monthly bill is the Demand Charge.

- * Demand Charge is applied to the Monthly Billing Demand defined as the greater of the following expressed in kV.A:
 - i. measured demand.*
 - ii. 70% of highest measured demand in the Billing Year** for the months of December, January, February.*
 - iii. 25% of contract demand*
 - iv. 25% of the highest measured demand in any of the previous 12 months.*

** *Billing year - Twelve monthly billing periods commencing with the month of December and ending the following November.*

**APPENDIX B
FORM FOR MONTHLY INVOICES**



**KEYYASK GENERATING
STATION INVOICE**

To: Keeyask Power Limited Partnership Attn.: PO Box 815, 820 Taylor Avenue Winnipeg, Manitoba R3C 2P4	Invoice Date: Invoice Number: Customer Number:
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Invoice Description: Keeyask Power Limited Partnership construction costs for Keeyask Generating Station for the billing period _____ (monthly) as per details on page 2.

Amount Due:

Payment Transfer: Royal Bank 220 Portage Avenue Winnipeg, Manitoba, R3C 2P3 Bank number 003 Transit number 00007 Account # 1043413	Payment Terms: 5 business days from receipt of invoice. GST Registration Number: #122063779
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Invoice Inquiries:
Ms. - Major Projects Dept.
1146 Waverley Street, Bay 12
Winnipeg, Manitoba, R3T 0P4
Phone (204) 474-3731
E-mail - @hydro.mb.ca



**KEEYASK GENERATING
STATION INVOICE**

Invoice Details:

Construction Agreement:

Contract #1 Progress Payment (<i>for this billing period</i>)	-
Contract #2 Progress Payment (<i>for this billing period</i>)	-
Contract # x Progress Payment (<i>for this billing period</i>)	-
Other Contract Payments	-
Less: Contract Holdbacks	-
Consulting Fees	-
Manitoba Hydro Labour	-
Manitoba Hydro Expenses	-
Sub-Total	-

Management Agreement:

Manitoba Hydro Labour	-
Manitoba Hydro Expenses	-
Consulting Fees	-
Sub-Total	-

Adjustments to Previous Invoice -

Total -

GST @ 5% -

Amount Due -

APPENDIX C

FORMAT FOR MONTHLY REPORTS

**KEEYASK GENERATING STATION
MONTHLY REPORT**

REPORT FOR THE PERIOD ENDING (dd/mm/yy)

EXECUTIVE SUMMARY

FINANCIAL PERFORMANCE

(current month construction costs, actual costs to date, and total planned costs)

SCHEDULE

(milestone chart and commentary on progress to date and future work)

CONTRACT SUMMARY

(summary of active major contracts awarded, summary of purchase orders, contractor description, status, estimated or authorized value, current month's payment, actual payments to date and commentary)

SITE

(safety, summary of cultural, environmental and camp activities/issues, labour relations including site employment statistics such as number and percentage of aboriginal hires)

MONITORING

(summary of monthly project monitoring activities environmental and socio-economic)

TRANSMISSION AND DISTRIBUTION UPDATE

PHOTOGRAPHS

(project pictures to provide a visual progress report)