

**SCHEDULE 24-3**

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**CONFIDENTIALITY AGREEMENT  
(FOX LAKE)**

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between:

**MANITOBA HYDRO**

- and -

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**DATED**

**200 .**

**SCHEDULE 24-3**

**CONFIDENTIALITY AGREEMENT (FOX LAKE)**

**MADE** effective as of the \_\_\_\_ day of \_\_\_\_\_, 200\_.

**BETWEEN:**

**MANITOBA HYDRO**

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

- and -

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(each individually referred to as the “**Recipient**”).

**WHEREAS** on [insert date] Tataskweyak Cree Nation and War Lake First Nation operating as Cree Nation Partners, York Factory First Nation, Fox Lake Cree Nation and The Manitoba **Hydro**-Electric Board entered into the Joint Keeyask Development Agreement (the “**JKDA**”) with respect to the development of the Keeyask Generating Station on the lower Nelson River in northern Manitoba (the “**Keeyask Project**”);

**AND WHEREAS** the **Recipient** is acting on behalf of or in the interests of Fox Lake Cree Nation and/or FLCN Keeyask Investments Inc. and, on behalf of Fox Lake Cree Nation and/or Fox Lake Cree Nation Keeyask Investments Inc., has entered and will enter into various discussions, processes and committees and/or negotiations with **Hydro** with respect to the implementation of the **JKDA** and the development and operation of the **Keeyask Project**;

**AND WHEREAS** **Hydro** may provide to the **Recipient** or the **Recipient** may come into the receipt of certain **Confidential Information** relating to the business and affairs of **Hydro** relating to the **Keeyask Project**;

**NOW THEREFORE, IN CONSIDERATION** of the premises and mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. The following capitalized terms shall have the following ascribed meanings when used in this Agreement:

“**Confidential Information**” shall mean any **Information** marked by **Hydro** as “Confidential” or, if the **Information** is verbal, specified verbally by **Hydro** as confidential at the time of its disclosure.

“**Information**” shall mean any and all **Information** disclosed after the date of this agreement, whether written, verbal, in the form of computer data or programs or in any other form whatsoever, concerning the **Keeyask Project** and related thereto, including but not limited to project plans, designs, costs, estimates, prices, finances, marketing plans, research, forecasts, analyses, development, know-how or collective bargaining agreements or positions with respect thereto.

“**Top Secret Information**” shall mean any **Information** marked by **Hydro** as “Top Secret” or, if the **Information** is verbal, specified verbally by **Hydro** as top secret at the time of its disclosure, and confirmed as such by **Hydro** in writing within five (5) business days of such disclosure.

2. Notwithstanding the definition of “**Information**” in section 1 of this Agreement, “**Information**” shall not include **Information** that:
  - (a) at the time of its disclosure by **Hydro** is generally available to the public;
  - (b) subsequently becomes generally available to the public through no fault or breach on the part of the **Recipient**;
  - (c) the **Recipient** can demonstrate to have had rightfully in his possession prior to disclosure to the **Recipient** by **Hydro**;
  - (d) is independently developed by the **Recipient** without the use of any **Information**;
  - (e) the **Recipient** rightfully obtains from a third party who has the right to transfer or disclose it; or,
  - (f) is subpoenaed, ordered, or required to be disclosed or made public by any Canadian regulatory or judicial authority.
3. **Hydro** acknowledges and agrees that the **Recipient** shall be entitled to use **Information** only in the following manner:
  - (a) in order to analyze, assess and evaluate the **Keeyask Project** and the participation of Fox Lake Cree Nation and FLCN Keeyask Investments Inc. in the **Keeyask Project**;
  - (b) to discuss and consult with Chief and Council of Fox Lake Cree Nation, members, employees and advisors, or FLCN Keeyask Investments Inc., its general partner board members, its employees or advisors in respect of all matters

relating to any such analysis, assessment and evaluation of the **Keeyask Project**, and the participation of Fox Lake Cree Nation or FLCN Keeyask Investments Inc. in the **Keeyask Project**; and

- (c) to discuss and consult with the respective Chiefs and Councils of Tataskweyak Cree Nation, War Lake First Nation and York Factory First Nation, their respective employees and advisors, Cree Nations Partners Limited Partnership, York Factory First Nation Limited Partnership, their respective board members, employees and advisors, **Hydro**, its employees, **Hydro** consultants, representatives of the Government of Manitoba, Ministers of the Provincial and Federal Crown and their responsible senior officials, in respect of matters relating to the participation of Fox Lake Cree Nation, FLCN Keeyask Investments Inc., the Cree Nation Partners, Cree Nation Partners Limited Partnership, York Factory First Nation or York Factory First Nation Limited Partnership in the **Keeyask Project**.

4. **Hydro** acknowledges and agrees that the **Recipient** shall be entitled to use **Confidential Information** only in the following manner:

- (a) in order to analyze, assess and evaluate the **Keeyask Project** and the participation of the Fox Lake Cree Nation or FLCN Keeyask Investments Inc. in the **Keeyask Project**;
- (b) to discuss and consult with Chief and Council of Fox Lake Cree Nation, employees and advisors, FLCN Keeyask Investments Inc., its general partner board members, employees or advisors who have also signed a Confidentiality Agreement satisfactory to **Hydro** in respect of all matters relating to any such analysis, assessment and evaluation of the **Keeyask Project**, and the participation of Fox Lake Cree Nation or FLCN Keeyask Investments Inc., in the **Keeyask Project**;
- (c) to discuss and consult with **Hydro**, its employees, **Hydro** consultants, representatives of the Government of Manitoba, Ministers of the Provincial and Federal Crown and their responsible senior officials, in respect of matters relating to the participation of Fox Lake Cree Nation or FLCN Limited Partnership in the **Keeyask Project**.
- (d) to discuss and consult with the respective Chiefs and Councils of Tataskweyak Cree Nation, War Lake First Nation and York Factory First Nation, their respective employees or advisors, Cree Nation Partners Limited Partnership, York Factory First Nation Limited Partnership, and their respective board members, employees or advisors who have also signed a Confidentiality Agreement satisfactory to **Hydro**. **Hydro** agrees to advise the **Recipient** of such signatories under this subparagraph (d) and of all signatories under subparagraph (b), by providing a current listing of all such signatories to the address(es) for

Fox Lake Cree Nation set out in section 13 of this Agreement and to provide updates of such listing as required from time to time; and,

- (e) to prepare or have prepared high-level summaries of such **Confidential Information** for the purpose of discussion with Fox Lake Cree Nation's members (but not other third parties) in order to inform such members of Fox Lake Cree Nation's analysis, assessment and evaluation of the **Keeyask Project** and the participation of Fox Lake Cree Nation or FLCN Keeyask Investments Inc. in the **Keeyask Project**. If the **Recipient** desires to disclose such **Confidential Information** to members of Fox Lake Cree Nation in unaltered form, the **Recipient** shall consult and receive the consent of **Hydro** in advance of such disclosure.
5. **Hydro** acknowledges and agrees that the **Recipient** shall be entitled to use **Top Secret Information** only in the following manner:
- (a) subject to subparagraph 5(b), in order to analyze, assess and evaluate the **Keeyask Project** and the participation of Fox Lake Cree Nation or FLCN Keeyask Investments Inc. in the **Keeyask Project**;
  - (b) to discuss and consult with a limited, core group of individuals from the Fox Lake Cree Nation, its Chief and Council, or from FLCN Keeyask Investments Inc. and/or its general partner board members, its employees and advisors, who have also signed a Confidentiality Agreement satisfactory to **Hydro**, in respect of all matters relating to any such analysis, assessment and evaluation of the **Keeyask Project**, and the participation of Fox Lake Cree Nation or FLCN Keeyask Investments Inc. in the **Keeyask Project**, and to discuss and consult with a limited core group of individuals, identified by **Hydro** as entitled to receive and use **Top Secret Information**, representing Cree Nation Partners and Cree Nation Partners Limited Partnership, York Factory First Nation or York Factory First Nation Limited Partnership in respect of all matters relating to the aforesaid analysis, assessment, evaluation and participation in the **Keeyask Project**. Fox Lake Cree Nation and **Hydro** shall consult as to the core group of individuals representing Fox Lake First Nation and Fox Lake Cree Nation Keeyask Investments Inc., who will be entitled to receive and use **Top Secret Information**. **Hydro** agrees to advise the **Recipient** of the core group of individuals entitled to receive and use **Top Secret Information** from Tatabaskweyak Cree Nation, War Lake First Nation, Cree Nation Partners Limited Partnership, Fox Lake Cree Nation, FLCN Keeyask Investments Inc., York Factory First Nation and York Factory First Nation Limited Partnership, by providing a current listing of such individuals to the address(es) of Fox Lake Cree Nation set out in section 13 of this Agreement and to provide updates of such listing as required from time to time.
6. Upon **Hydro**'s request or upon the expiry or termination of the **JKDA**, the **Recipient** shall within 30 days:

- (a) deliver to **Hydro** all copies whether written, in the form of computer data or otherwise, of all **Information, Confidential Information** and **Top Secret Information** in the possession of the **Recipient**;
  - (b) where the return of any **Information, Confidential Information** and **Top Secret Information** is not practicably possible, permanently erase or destroy such **Information, Confidential Information** and **Top Secret Information** in the **Recipient**'s possession and/or control upon the prior consent of **Hydro**; and
  - (c) certify in writing to **Hydro** within fourteen (14) days of **Hydro**'s request for return of any **Information, Confidential Information** or **Top Secret Information** that to the best of the **Recipient**'s knowledge, this section 6 has been complied with and that no such **Information, Confidential Information** or **Top Secret Information** remains in possession or control of the **Recipient** except that the **Recipient** shall be entitled to retain one copy of such **Information, Confidential Information** and **Top Secret Information** as may reasonably be required for the **Recipient**'s internal record-keeping purposes. The **Recipient** shall, in the certification referenced in this paragraph 6(c), provide a detailed summary of the **Information, Confidential Information** and **Top Secret Information** retained for such internal record-keeping purposes in a form satisfactory to **Hydro**.
7. The **Recipient** specifically acknowledges and agrees that except as provided in the preceding sections 3, 4 and 5, the **Recipient** shall maintain the **Information, Confidential Information** and **Top Secret Information** in strict confidence and shall not disclose it to any third party for any reason whatsoever without the prior written consent of **Hydro**. If a **Recipient** is unclear as to whether **Information** is Confidential or Top Secret, the **Recipient** shall promptly discuss and receive direction from **Hydro** with respect to such categorization. The **Recipient** acknowledges that the **Information, Confidential Information** and **Top Secret Information** are the sole and exclusive property of **Hydro**.
8. The **Recipient** hereby consents to the release of the **Recipient**'s name to legal counsel or other designated representative for each of Fox Lake Cree Nation, FLCN Keeyask Investments Inc., Cree Nation Partners, Cree Nation Partners Limited Partnership, York Factory First Nation and York Factory First Nation Limited Partnership for the purposes of providing a current listing of parties who have signed a Confidentiality Agreement satisfactory to **Hydro** in relation to the **Keeyask Project** and that such listing, including the **Recipient**'s name, may be distributed amongst the respective Chiefs and Councils, employees and advisors of each of Fox Lake Cree Nation, FLCN Keeyask Investments Inc., Cree Nation Partners, Cree Nation Partners Limited Partnership, York Factory First Nation and York Factory First Nation Limited Partnership.
9. **Hydro** does not make any express or implied representation or warranty to the **Recipient** as to the accuracy or completeness of any **Information** given to the **Recipient**, including **Information, Confidential Information** and **Top Secret Information**. Neither **Hydro**

nor its representatives shall have any liability whatsoever to the **Recipient** or any other person, directly or indirectly, arising out of the furnishing of the **Information, Confidential Information** or **Top Secret Information** or use made of the **Information, Confidential Information** or **Top Secret Information** by the **Recipient**, the Fox Lake Cree Nation or FLCN Keeyask Investments Inc. or their representatives, except as may be specifically provided for in any other agreement in writing and made between **Hydro** and Fox Lake Cree Nation or FLCN Keeyask Investments Inc. and excepting any **Information, Confidential Information** or **Top Secret Information** that is either negligently given or which constitutes willfully given misinformation.

10. The **Recipient** shall not be restricted by this Agreement from disclosure of **Information, Confidential Information** and **Top Secret Information**, or subject to liability for such disclosure when, in the reasonable opinion of the legal counsel of the **Recipient**, disclosure is required to be made by the laws of Manitoba or Canada. Prior to making such disclosure, the **Recipient** shall give **Hydro** prompt notice of the **Information, Confidential Information** or **Top Secret Information** that the **Recipient** proposes to disclose, together with a letter from legal counsel of the **Recipient** detailing the requirement for disclosure.
11. In the event disclosure is required as a result of any manner of legal process, the **Recipient** shall give **Hydro** prompt notice of such process and agrees, subject to not being in violation of any outstanding court order or other legal process, to take such steps as may be necessary to maintain the confidentiality of the **Information, Confidential Information** or **Top Secret Information**, as applicable, and to cooperate fully with **Hydro** in respect of any actions **Hydro** may wish to take to maintain the confidentiality of the **Information, Confidential Information** or **Top Secret Information**, as applicable.
12. The **Recipient** will not use the **Information, Confidential Information** or **Top Secret Information** in any manner that causes the **Recipient**, Fox Lake Cree Nation or FLCN Keeyask Investments Inc. or **Hydro** to be in breach of any applicable law, or that causes **Hydro** to lose any rights under applicable law.
13. Any notice, direction or other instrument required or permitted to be given under this Agreement shall be in writing, and may be given by delivering it or sending it by facsimile as follows:
  - (a) if to **Hydro**:  
820 Taylor Avenue  
Winnipeg, Manitoba R3C 2P4  
Attention:  
Fax No. (204)
  - (b) if to the **Recipient**: [insert appropriate address]

Fax No. (204)

with a copy to: [insert appropriate address]

Fax no. (204)

or such other address as such party may notify the other of in writing. Any notice, direction or other instrument shall, if delivered, be deemed to be given or made at the time of delivery and, if sent by facsimile, be deemed to be given or made on the day following the day on which it was sent.

14. This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
15. This Agreement and the obligations of confidentiality and non-disclosure contained herein shall survive and continue in full force and effect, notwithstanding the termination of any other agreement or understanding between the **Recipient** and **Hydro** or between **Hydro** and Fox Lake Cree Nation or FLCN Keeyask Investments Inc. and the completion of any agreement or agreements pertaining to the **Keeyask Project** or any other transaction arising out of or related to the **Keeyask Project** between **Hydro** and Fox Lake Cree Nation or the FLCN Keeyask Investments Inc..
16. The parties acknowledge that remedies at law may be inadequate to protect against a breach of this Agreement and hereby in advance, agree to the granting of injunctive relief without proof of actual damages. The parties further agree that the obtaining of injunctive relief is without prejudice to or in substitution of exercising rights and remedies otherwise available to **Hydro**.
17. Any confidentiality agreement previously executed by the **Recipient** in relation to the **Keeyask Project** shall survive, but shall only be effective with respect to **Information** received up to the effective date of this agreement. After the effective date of this agreement, **Information** provided to a **Recipient** who has executed this agreement shall be governed only by the provisions by this agreement.
18. The obligations of each **Recipient** shall be several and not joint.
19. This Agreement may be executed in any number of counter-parts and shall be binding upon the **Recipient** when executed by the **Recipient**.
20. A facsimile of the signature of a party to this Agreement shall be binding and as effective as if it were an original signature.
21. The Preamble hereto shall be deemed to form an integral part of this Agreement.



**IN WITNESS WHEREOF** the parties have executed this Agreement effective as of the date first above written.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
Name (print): \_\_\_\_\_

**MANITOBA HYDRO**

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