

APPENDIX 9

TRADE SECRET DATA EXCISED

133 MW ENERGY SALE AGREEMENT

between

THE MANITOBA HYDRO-ELECTRIC BOARD

- and -

MINNESOTA POWER, an operating division of ALLETE, Inc.

DATED JULY 30, 2014

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APPENDIX N - [TRADE SECRET DATA EXCISED]

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133 MW ENERGY SALE AGREEMENT

DATED July 30, 2014

BETWEEN:

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter referred to as “MH”),

- and -

MINNESOTA POWER, an operating division of ALLETE, Inc.,

(hereinafter referred to as “MP”).

WHEREAS, MP and MH are the owners and operators of electric generation facilities in the United States of America and in Canada, respectively, and are engaged in the generation, distribution and sale of electric energy;

AND WHEREAS, MP, MH and 6690271 Manitoba Ltd. entered into a term sheet dated September 27, 2013, (the “**Term Sheet**”) for a number of proposed transactions;

AND WHEREAS, each of the aforesaid proposed transactions contemplated by the Term Sheet was subject to a number of conditions including the execution and delivery of definitive written agreements;

AND WHEREAS, this Agreement is the definitive agreement for one of the proposed transactions being the sale by MH and the purchase by MP of the Firm Energy and [TRADE SECRET DATA EXCISED] Environmental Attributes;

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AND WHEREAS, MP agrees to purchase and MH agrees to sell the Firm Energy and the [TRADE SECRET DATA EXCISED] Environmental Attributes pursuant to the terms and conditions set forth in this Agreement;

AND WHEREAS, the Parties require governmental permits and approvals for the import and export of electric energy;

AND WHEREAS, MP is a member of MISO and subject to applicable MISO tariffs, and MH is a coordinating member of MISO.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE I INTERPRETATION

1.1 Defined Terms

Unless otherwise specified in this Agreement, the following terms shall, for the purposes of this Agreement, have the following meanings:

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“**133 MW Canadian TSR**” shall have the meaning set forth in Section 3.1(1)(d)(ii).

“**133 MW US TSR**” shall have the meaning set forth in Section 3.1(1)(a)(ii)(B).

“**250 MW System Power Sale Agreement**” shall mean the 250 MW System Power Sale Agreement entered into between MP and MH on May 19, 2011.

“**500 kV Canadian Transmission Interconnection**” shall have the meaning set forth in Section 3.1(1)(g).

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“500 kV Transmission Interconnection” shall have the meaning set forth in Section 3.1(1)(g).

“500 kV Transmission Interconnection In-service Date” shall mean when the 500 kV Transmission Interconnection is commissioned and comes into service.

“500 kV US Transmission Interconnection” shall have the meaning set forth in Section 3.1(1)(g).

“500 kV US Transmission Interconnection Miles” shall mean the distance in miles of the 500 kV US Transmission Interconnection.

“2014 Energy Exchange Agreement” shall mean the 2014 Energy Exchange Agreement entered into between MP and MH concurrently with this Agreement.

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“Affiliate” shall mean any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with MP or MH, and shall include a wholly owned subsidiary of MP or MH.

“Agreement” means this 133 MW Energy Sale Agreement and all amendments thereto.

“[TRADE SECRET DATA EXCISED] Environmental Attributes” shall have the meaning set forth in Section 8.1(1).

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“Ancillary Services” shall mean those Ancillary Services (as defined under the TARIFF) and other reasonably similar services and products, associated, directly or indirectly, with the transmission of the Firm Energy and/or the transmission of the Firm Energy but for greater certainty does not include Environmental Attributes.

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“**Bankruptcy Code**” shall have the meaning set forth in Section 10.1(1)(k).

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“**Business Day**” shall mean Monday through Friday, excluding Canadian banking holidays (such banking holidays shall be as recognized by the Canadian Payments Association or any successor agency) and United States banking holidays (such banking holidays shall be as recognized by the Federal Reserve Board or any successor agency).

“**Canadian FCA**” shall have the meaning set forth in Section 3.1(1)(f).

“**Canadian TSRs**” shall have the meaning set forth in Section 3.1(1)(d).

“**Canadian Upgrades**” shall have the meaning set forth in Section 3.1(1)(e).

“**Capital Recovery**” shall have the meaning set forth in Section 2.6(d).

“**Centrally Operated Market**” shall mean a centrally operated structure or structures bringing together buyers and sellers to facilitate the exchange of wholesale electricity products and/or related services.

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“**Commercially Reasonable Efforts**” shall mean those efforts expended by a Party, acting reasonably, under normal commercial conditions to identify, develop, and implement a solution to an issue or problem that is cost effective (taking into account the complexity and importance of the issue or problem being addressed) and is also consistent with applicable legal requirements, rules governing any applicable Market

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and Good Utility Practice if the Party is MP and Good Hydro Utility Practice is the Party is MH.

“**Confidential Information**” shall have the meaning set forth in Section 11.1(a).

“**Contingency Reserve(s)**” shall have the meaning set forth in the NERC Glossary of Terms.

“**Contingency Reserves Emergency Energy**” shall mean the energy required to be supplied by MH pursuant to a NERC Contingency Reserve obligation.

“**Contract Term**” shall mean the twenty (20) year period, from the 500 kV Transmission Interconnection In-service Date.

“**Contract Year**” shall mean a twelve-month period, June 1 through May 31 of the following calendar year, which is within the Contract Term.

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“**CPT**” shall mean Central Prevailing Time.

“**Credit Support Provider**” shall mean a Person approved by the Requesting Party who provides Performance Assurance on behalf of the Second Party.

“**Day-Ahead Basis**” shall mean in advance, not later than 11 a.m. (EST) of the Business Day prior to any day that the Firm Energy is to be made available to MP.

“**Day-Ahead Energy and Operating Reserve Market**” shall mean the day-ahead market established pursuant to and defined by the TARIFF.

“**Day-Ahead Energy Price**” shall have the meaning set forth in the Tariff.

“**DBRS**” shall mean DBRS Limited or its successor.

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“**Defaulting Party**” shall have the meaning set forth in Section 17.3(1).

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[TRADE SECRET DATA EXCISED]

“**Delivery Point**” shall have the meaning set forth in Section 2.3(1).

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“**Discloser**” shall have the meaning set forth in Section 11.1.

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“**EA Calendar Year**” shall have the meaning set forth in Section 8.8.

“**Early Termination Date**” shall have the meaning set forth in Section 17.3(1).

“**Effective Date**” shall mean the date this Agreement is executed by the Parties.

“**Emergency Energy**” shall have the meaning set forth in the TARIFF.

“**Energy Exchange Agreement**” shall mean the Energy Exchange Agreement entered into between MP and MH on May 19, 2011.

“**Environmental Attributes**” shall mean the rights to any existing or future environmental benefits or attributes, credits, renewable characteristics, avoided emissions, avoided greenhouse gas emissions, emission reductions, emissions or greenhouse gas emissions associated with, related to or derived or resulting from the generation of electricity.

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“**Event of Default**” shall have the meaning set forth in Section 17.1.

“**Executive Officers**” shall be, in the case of MH the Vice-President Generation Operations, and in the case of MP the Vice-President of Strategy and Planning or its successor, or such other officer designated by each Party from time to time.

“**FERC**” shall mean the Federal Energy Regulatory Commission or its successor.

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“**Firm Energy**” shall have the meaning set forth in Section 2.1(1).

“**Firm Energy Price**” shall have the meaning set forth in Section 4.1.

“**Firm Point-to-Point Transmission Service**” shall have the meaning set forth in the applicable OATT.

“**Firm Power**” shall mean: (a) generating capacity that is intended to be available at all times, except as otherwise agreed by the seller and the purchaser, and for which the seller maintains generation reserves in accordance with standards and requirements established by the RRO to which the seller belongs; and (b) energy that was contracted to be supplied by the seller to the purchaser.

“**Firm Transmission Service**” shall mean transmission service provided pursuant to the OATT of either Party’s Transmission Provider, being either Firm Point-to-Point Transmission Service or Network Integration Transmission Service, or the highest priority transmission service available pursuant to either Party’s OATT, or in the event that either Party does not have an OATT, the highest priority transmission service available to that Party for the delivery of energy and the supply of capacity.

“**Force Majeure**” shall mean an event or circumstances that prevents or delays one Party (the “**Claiming Party**”) from performing its obligations under this Agreement and that is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and that, by the exercise of Good Utility Practice, if the Claiming Party is MP and the exercise of Good Hydro Utility Practice if the Claiming Party is MH, unable to overcome or avoid or cause to be avoided, including but not restricted to, acts of God, [TRADE SECRET DATA EXCISED], strikes, lockouts and other labour disturbances, epidemics, pandemic, war (whether or not declared), blockades, acts of public enemies, acts of sabotage or terrorism, civil insurrection, riots or civil disobedience, any situation where delivery or acceptance will endanger the Claiming Party’s facilities or endanger that Party’s system operations, explosions, acts or omissions of any Governmental Authority taken on or after the Effective Date, (including the adoption or change in any law or regulation lawfully imposed by such

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Governmental Authority) but only if, and to the extent that, such action or inaction by such Governmental Authority prevents or delays the Claiming Party's performance and/or renders the Claiming Party unable, despite due diligence, to obtain any licenses, permits, or approval required by any Governmental Authority, and the issuance of any order, injunction, or other legal or equitable decree, if any, to the extent that any of the foregoing prevents or delays the performance of the Claiming Party's obligations hereunder. As used in this Agreement, an event or circumstance can "prevent" a Party's performance not only if it physically prevents such performance, but also if it renders such performance unlawful.

"Good Hydro Utility Practice" shall mean, at any particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the hydro-electric utilities located in North America during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could be expected to produce the desired result at a reasonable cost consistent with reliability, safety, and expedition. Good Hydro Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but includes a range of acceptable practices, methods, or acts.

"Good Utility Practice" shall mean, at any particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utilities located in North America during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could be expected to produce the desired result at a reasonable cost consistent with reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but includes a range of acceptable practices, methods, or acts.

"Governmental Authority" shall mean any federal, state, or provincial government, parliament, legislature, or any regulatory authority, agency, bureau, department,

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commission or board of any of the foregoing, or any political subdivision thereof, or any court or administrative tribunal, or, without limitation, any other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing, or any other authority charged with the administration or enforcement of applicable laws.

“Governmental Charges” shall mean all applicable federal, state, provincial and local ad valorem, property, occupation, severance, generation, first use, conservation, or energy, transmission, utility, gross receipts, privilege, sales, use, goods and services, consumption, excise and other taxes, charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, independent system operator, utility, transmission and/or distribution provider or similar Person, however styled or payable.

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“Guarantee Agreement” shall mean a guarantee provided to the Requesting Party by a Credit Support Provider with an Investment Grade Credit Rating as Performance Assurance pursuant to Section 14.2(1) in a form acceptable to the Requesting Party acting with commercially reasonable discretion.

“Interest” shall have the meaning set forth in Section 2.6(e).

“Interest Rate” shall mean, for any date, the lesser of: (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%); and (b) the maximum rate permitted by applicable law.

“Investment Grade Credit Rating” shall mean with respect to any Person, a rating (unenhanced by unaffiliated third party support) of not less than:

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- (a) BBB- from S&P; or
- (b) Baa3 from Moody's; or
- (c) BBB(low) from DBRS,

then assigned to the lower of:

- (i) its unsecured, senior long-term debt obligations; or
- (ii) if applicable, its issuer rating,

in each instance, unenhanced by unaffiliated third party support and not on "credit watch" or "negative outlook", provided, however, that in the event that such Person has a rating from one of the aforesaid rating agencies below the required level, the lowest such rating shall apply for the purposes of this definition.

"Letter(s) of Credit" shall mean one or more irrevocable, transferable, standby letters of credit, issued by a commercial bank, as defined in either the Federal Deposit Insurance Act (United States) or the Bank Act (Canada), or successor legislation, operating from an office in either the United States or Canada whose credit rating is, at such time of issuance, at least "A-" by S&P or "A3" by Moody's or A(low) by DBRS, or an equivalent rating by any successor rating agency thereof (if any), in a form as the issuing bank may request and as may be acceptable in a commercially reasonable manner to the Party in whose favor the Letter of Credit is issued.

"Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit shall fail to maintain a credit rating of at least "A-" by S&P or "A3" by Moody's or A(low) by DBRS; (b) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (c) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect, at any time during the Contract Term; (d) any event analogous to an event specified in Section 17.1(c), (d),(e) or (g) of this Agreement shall occur with

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respect to the issuer of such Letter of Credit; or (e) twenty (20) Business Days prior to the expiration or termination date of such Letter of Credit, such Letter of Credit has not been extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced.

“Market” or **“Markets”** shall mean:

- (a) a Centrally Operated Market; and/or
- (b) the wholesale purchase and sale of electricity products and/or related services on a bilateral basis.

“Market Participant” shall have the meaning set forth in the TARIFF.

“Market Portal” shall have the meaning set forth in the TARIFF.

“Market Settlement Amounts” shall mean any and all charges attributable to either Party arising out of a process of determining charges established and maintained at any time and from time to time by a Market (or a Transmission Provider).

“Median Water” means [TRADE SECRET DATA EXCISED]

“MH Minimum Annual Energy Decrement Event” shall have the meaning set forth in Section 3.4(2).

“MH/MP Agreements” shall mean this Agreement, the 250 MW System Power Sale Agreement, the Energy Exchange Agreement and the 2014 Energy Exchange Agreement.

“MH OASIS” shall mean the “Open Access Same-Time Information System” used by MH.

“MH Termination Event” shall have the meaning set forth in Section 17.4.

“MH’s Border Accommodation Power Sales” shall mean those sales of Firm Power made by MH, as seller, which for some purposes are treated by MH as part of MH’s

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End-Use Load, to Persons located in provinces and states adjacent to the province of Manitoba in circumstances whereby electric service to those locations is not otherwise readily available from other power suppliers. In all cases, these sales are made over transmission systems lower than 115 kV.

“MH’s Conditions Precedent” shall have the meaning set forth in Section 12.1.

“MH’s Curtailment of Cleared Firm Energy” shall have the meaning set forth in Section 3.4(4).

“MH’s Electrical Generation Facilities” shall mean MH’s electrical generation facilities that are either owned and operated or operated by MH.

“MH’s End-Use Load” shall mean: (a) the total load of Persons that purchase electric service from MH for their own consumption in the province of Manitoba and not for resale including any portion of that Person’s load that may from time to time not be supplied by MH but may be produced by that Person; (b) MH’s Border Accommodation Power Sales; and (c) MH’s Separated Load Sales.

“MH’s Energy Commitments” shall mean the energy required by MH to serve the total of the following obligations of MH: (a) MH’s End-Use Load; (b) all energy sales by MH that are associated with planning capacity; and (c) all energy sales that are not associated with planning capacity including all of MH’s Firm LD Energy Sales and MH’s Firm Energy Sales.

“MH’s Energy Resources” shall mean the sources of generation identified in Appendix “B”, as such Appendix is revised from time to time.

“MH’s Firm Energy Sales” shall mean those sales by MH described as “Firm Energy Sales” in agreements entered into between MH and third Persons.

“MH’s Firm LD Energy Sales” shall mean those sales by MH described as “Firm LD Sales” in agreements entered into between MH and third Persons.

“MH’s HVDC System” shall mean MH’s high voltage direct current transmission

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system.

“**MH’s Real Time Energy**” shall have the meaning set forth in Section 3.2(9).

“**MH’s Required Approval**” shall have the meaning set forth in Section 12.3.

“**MH’s Separated Load Sales**” shall mean those sales of energy made by MH, as seller, which are treated by MH as part of MH’s End-Use Load, to Persons located in provinces and states adjacent to the Province of Manitoba in circumstances whereby electric service to those locations becomes separated due to forced outages, planned outages, or scheduled outages by the applicable Transmission Provider, from the said province or state adjacent to the Province of Manitoba and such outages require electric service to be provided by MH until electric service is restored.

“**MH’s Wind Energy**” shall mean all energy: (a) that is generated by a wind generation facility that is part of MH’s integrated power system; or (b) was purchased by MH from a wind generation facility.

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“**Minimum Annual Energy Amount**” shall have the meaning set forth in Section 2.1(1)(b).

“**MISO**” shall mean the Midcontinent Independent System Operator, Inc.

“**MISO OASIS**” shall mean “MISO’s Open Access Same-Time Information System” as defined in the TARIFF.

“**Moody’s**” shall mean Moody’s Investors Service Inc. or its successor.

“**MP Minimum Annual Decrement Event**” shall have the meaning set forth in Section 3.8(3).

“**MP’s Required Approval**” shall have the meaning set forth in Section 12.3.

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“**MP Termination Event**” shall have the meaning set forth in Section 17.5.

“**MP’s Conditions Precedent**” shall have the meaning set forth in Section 12.2.

“**MP’s Curtailment of MH’s Cleared Energy**” shall have the meaning set forth in Section 3.8(2).

“**MPUC**” shall mean the Minnesota Public Utilities Commission or any successor state regulatory commission of competent jurisdiction.

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“**MRO**” shall mean the Midwest Reliability Organization or successor regional reliability organization, or any committee or subcommittee thereof.

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“**NEB**” shall mean the National Energy Board of Canada or its successor.

“**NERC**” shall mean the North American Electric Reliability Corporation or its successor.

“**Net Scheduled Interchange**” shall have the meaning set forth in the TARIFF.

“**Network Integration Transmission Service**” shall have the meaning set forth in the applicable OATT.

“**Non-defaulting Party**” shall have the meaning set forth in Section 17.3(1).

“**Non-Disclosure Agreement**” shall mean that certain non-disclosure agreement between the Parties, dated November 11, 2011.

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“**On-Peak Hours**” shall mean HE 7:00 CPT to HE 22:00 CPT Monday to Friday.

“**Open Access Transmission, Energy and Operating Reserve Markets Tariff**” or “**TARIFF**” shall mean the Open Access Transmission, Energy and Operating Reserve Markets FERC Electric Tariff, including all schedules and attachments thereto, of the Midcontinent Independent System Operator, Inc. issued on May 1, 2013, as amended, supplemented, or replaced from time to time.

“**Open Access Transmission Tariff**” or “**OATT**” shall mean a transmission tariff as it may be in effect from time to time that: (a) in the case of MP’s Transmission Provider, has been filed with and accepted by FERC as complying with FERC’s then current open access transmission, comparability, and non-discrimination requirements; and (b) in the case of MH, provides reciprocal open access transmission service on sufficiently comparable and non-discriminatory terms so as to entitle MH to use the transmission tariff of Transmission Providers in the United States; and (c) in the case of a third party, has been filed with and accepted by FERC as complying with FERC’s then current open access transmission, comparability, and non-discrimination requirements, or provides reciprocal open access transmission service on sufficiently comparable and non-discriminatory terms so as to entitle such entity to transmit electricity with entities whose transmission tariff has been filed with and accepted by FERC as a transmission tariff.

“**Operating Committee**” shall have the meaning set forth in Section 9.1(1).

“**Party**” shall mean either MH or MP and “**Parties**” means both MH and MP.

“**Performance Assurance**” shall have the meaning set forth in Section 14.2(1).

“**Person**” shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated association, syndicate, joint venture, or other entity or Governmental Authority.

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“**Pledgor**” shall have the meaning set forth in Section 14.3(1).

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“**Priority Criteria**” shall have the meaning set forth in Section 3.5.

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“**Purchase and Sale Exclusion Event(s)**” shall mean any or all of the following events or circumstances: (a) MH’s offer in respect of any amount of the Firm Energy, does not clear the Day-Ahead Energy and Operating Reserve Market; or (b) the curtailment, restriction, or reduction of any portion of the Firm Energy pursuant to Sections 3.4, 3.7 or 3.8 or Article XIII.

“**Real-Time Energy and Operating Reserve Market**” shall mean the Market for purchases and sales of Energy and Operating Reserve conducted by the Transmission Provider during the Operating Day, each as defined in and in accordance with the TARIFF.

“**Real Time Energy Price**” shall have the meaning set forth in Section 3.2(9).

“**Recipient**” shall have the meaning set forth in Section 11.1.

“**Representative**” shall have the meaning set forth in Section 11.1(b)(i).

“**Requesting Party**” shall have the meaning set forth in Section 14.2(1).

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“**RRO**” shall mean a regional reliability organization, including the MRO, if applicable.

“**S&P**” shall mean Standard & Poor’s Services Group (a division of McGraw-Hill Inc.) or its successor.

“**Seams Costs**” shall mean any and all transmission and transmission service and related costs applied by one Market for the transmission of energy and related products from that Market or to that Market at the boundary of that Market.

“**Schedule**” or “**Scheduling**” shall mean the actions of seller, buyer, and their designated representatives, of notifying, requesting, and confirming to each other the quantity of the Firm Energy and/or Ancillary Services to be delivered on any given day or days during the Contract Term.

“**Scheduled**” shall mean the result of Scheduling.

“**Second Party**” shall have the meaning set forth in Section 14.2(1).

“**Secured Party**” shall have the meaning set forth in Section 14.3(1).

“**Supplied Energy**” shall mean that portion of the Firm Energy that was, pursuant to this Agreement, supplied and sold by MH attributable to MH’s Energy Resources and for greater certainty shall not include any amount of the Firm Energy that was: (a) offered by MH but did not clear the Day-Ahead Energy and Operating Reserve Market; or (b) curtailed, restricted or reduced pursuant to Sections 3.4, 3.7 or 3.8 or Article XIII.

“**Term Sheet**” shall have the meaning set forth in the preamble.

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“**Transfer System**” shall have the meaning set forth in Section 8.4(2).

“**Transmission Minimum Annual Energy Decrement Event**” shall have the meaning set forth in Section 3.7(3).

“**Transmission Provider(s)**” shall mean, collectively, the Person or Persons as applicable who direct the operation of the Transmission Provider(s) System.

“**Transmission Provider(s) System**” shall mean the contiguously interconnected electric transmission and sub-transmission facilities, including land rights, material, equipment and facilities owned, controlled, directed, and/or operated by the Transmission Provider(s) that transmits and distributes electrical energy.

“**Transmission Service**” shall mean the Firm Transmission Service referred to in Sections 3.1(2), and 3.1(4).

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“**Unavailability of MH’s Purchased or Sold Power**” shall mean: (a) when all or a portion of capacity and/or energy, purchased from Persons, including from Markets outside the province of Manitoba, are unavailable to MH, due to curtailments, restrictions or reductions of the capacity and/or energy purchased in accordance with the provisions of one or more of the applicable power purchase agreements; or (b) where MH does not have access on commercially reasonable terms to Markets in the United States to purchase and import energy and/or capacity into MH’s integrated power system despite using Commercially Reasonable Efforts to gain such access; or (c) when the TARIFF or any MISO Business Practices Manual is revised to the extent that they unreasonably restrict MH’s ability to export power into the MISO market.

“**Unavailability of MH’s Purchased Power**” shall mean: (a) when all or a portion of the energy purchased by MH from MP (including any assignee of MP) is not received by MH, under the provisions of one or more of the applicable energy or power

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purchase agreements (if any) between MH and MP (including without limiting the generality of the foregoing due to curtailment or force majeure thereunder) unless the said energy is not received by MH due to MH being in default under the provisions of the applicable agreement; or (b) the occurrence of an uncured “Event of Default” (as defined in the Energy Exchange Agreement) by MP under the Energy Exchange Agreement; or (c) the occurrence of an uncured “Event of Default” (as defined in the 2014 Energy Exchange Agreement) by MP under the 2014 Energy Exchange Agreement.

“**U.S. Dollars**” or “**US \$**” shall mean lawful money of the United States of America.

“**US Business Day**” shall mean Monday through Friday, excluding United States banking holidays (such banking holidays shall be as recognized by the Federal Reserve Board or any successor agency).

“**US FCA**” shall have the meaning set forth in Section 3.1(1)(c).

“**US TSRs**” shall have the meaning set forth in Section 3.1(1)(a).

“**US Upgrades**” shall have the meaning set forth in Section 3.1(1)(b).

“**Use Limited System Installed Capacity**” shall mean the value attributed to electrical generating capacity based on generator testing data required to be provided by MH to MISO on an annual basis pursuant to MISO’s generator testing requirements and that due to design considerations, environmental restrictions on operations, cyclical requirements such as the need to recharge or refill, or for other non-economic reasons, is or may be unable to operate continuously on a daily basis, but is capable of providing energy for a minimum of four (4) continuous hours of each day during the expected peak load of the system operator to which the purchaser belongs during the term of the applicable power purchase and sale agreement. For greater certainty, Use Limited System Installed Capacity does not include any generation reserves.

“**WPS**” shall have the meaning set forth in Section 3.1(1)(a)(ii).

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1.2 Interpretation

Unless the context otherwise requires, this Agreement shall be interpreted in accordance with the following:

- (a) words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other;
- (b) any reference in this Agreement to any Person, includes its successors and permitted assigns, and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities;
- (c) any reference in this Agreement to any section or Appendix means and refers to the section contained in, or Appendix attached to, this Agreement;
- (d) other grammatical forms of defined words or phrases have corresponding meanings to the defined words or phrases;
- (e) a reference to writing includes typewriting, printing, lithography, photography, and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form, including electronic mail;
- (f) a reference to a Party to this Agreement includes that Party's successors and permitted assigns;
- (g) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as amended from time to time and includes any exhibits or attachments thereto;
- (h) headings are inserted for convenience only and shall not affect the interpretation of this Agreement or any section thereto;
- (i) the preamble hereto shall form an integral part of this Agreement; and
- (j) the word "including" means "including without limitation".

1.3 No Presumption

The Parties are both represented by counsel, have both participated in the negotiation and drafting of this Agreement, and have endeavoured to ensure that the terms of this

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Agreement are as clear as possible. Accordingly, in interpreting this Agreement there shall be no presumption in favour of or against any Party on the basis that it was or was not the drafter of this Agreement or any individual provision thereof.

ARTICLE II**SUPPLY AND PURCHASE OBLIGATIONS****2.1 Offers of Energy**

- (1) During each day of the Contract Term, MH shall sell to MP and MP shall purchase from MH such quantity of energy, if any, that MH determines for that day on a Day Ahead Basis that it has available for sale to MP, and is offered by MH to MP, on a Day Ahead Basis (the “**Firm Energy**”) provided that:
 - (a) the energy so offered for each hour in that day shall not exceed 133 MWh per hour; and
 - (b) so long as MH has experienced Median Water during a Contract Year during the Contract Term, as determined by MH on or before 120 calendar days after the end of such Contract Year, MH agrees that during such Contract Year, it shall have offered and made available, in accordance with Article III, a minimum of [**TRADE SECRET DATA EXCISED**] MWh of energy (the “**Minimum Annual Energy Amount**”).
- (2) MH agrees to provide to MP, within 180 days of the end of each Contract Year, of the quantity of hydraulic generation that was generated by MH in that Contract Year from MH’s integrated power system.
- (3) The Parties acknowledge that the Firm Energy has no Use Limited System Installed Capacity component and has no other capacity component except for operating capacity only in the event of and to the extent MH is required to make the Firm Energy available to MP in accordance with this Agreement.

2.2 Firm Energy

MH shall during the Contract Term, offer and make available the Firm Energy to the

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Delivery Point and MP shall accept delivery of and pay for the Firm Energy or alternatively, pay for the Firm Energy if not taken. The Parties acknowledge that the quantity of Firm Energy sold by MH and purchased by MP is impacted by the provisions of Section 3.2. The Parties further acknowledge MH would not be required to make available to MP, and MP would not be required to accept delivery of and pay for, or pay for if not taken, that quantity of Firm Energy that was curtailed, restricted or reduced pursuant to and in accordance with the provisions of Sections 3.4, 3.7 or 3.8 or if the additional Force Majeure provisions of Article XIII apply.

2.3 Delivery Point

- (1) The Parties agree that the delivery point for the Firm Energy that is sold by MH and purchased by MP under this Agreement shall be at the point or points where MH's major transmission facilities cross the international boundary between the Province of Manitoba and the United States of America (the "**Delivery Point**").
- (2) The Delivery Point for any portion of the Firm Energy to be sold and purchased herein may only be changed with the consent of the Parties, provided that the Party receiving a request from the other Party to change the Delivery Point must use Commercially Reasonable Efforts in responding to such request.

2.4 Title and Risk of Loss

Title to and risk of loss of the Firm Energy sold and purchased under this Agreement shall pass from MH to MP at the Delivery Point.

2.5 Ancillary Services

- (1) MP acknowledges and agrees that: (a) MH shall be entitled to retain all Ancillary Services; (b) MH shall be entitled to sell the Ancillary Services to other Persons through use of the Market Portal or otherwise and without limiting the generality of the foregoing, MH has the right to offer and/or schedule the Ancillary Services into the MISO market including in

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conjunction with Schedules for the delivery of the Firm Energy to MP in accordance with Section 3.2 or, in MH's sole discretion through the use of the Market Portal; (c) the price for the Firm Energy does not include any value in respect of or related to the Ancillary Services; and (d) MP shall use Commercially Reasonable Efforts to comply with all reasonable requests of MH concerning the Firm Energy and MH's participation in any Market in respect of or related to the Ancillary Services.

- (2) If MH's offer in respect of the Ancillary Services associated with a quantity of Firm Energy clears the Day-Ahead Energy and Operating Reserve Market, the Parties acknowledge that MH shall have no obligation to make available such quantity of energy to MP and MP shall have no obligation to pay for such quantity of energy, but MH shall continue to otherwise have an obligation to make available in accordance with Articles 2 and 3 that portion, if any, of the Firm Energy that MH offered into and cleared the Day-Ahead Energy and Operating Reserve Market and MP shall be obligated to pay for same.
- (3) MP shall, if required pursuant to the Market mechanisms in effect at the applicable time, approve any valid NERC E-Tag, prepared pursuant to and in accordance with the applicable Market procedures, associated with any offer of Ancillary Services made by MH pursuant to this Agreement into the Day-Ahead Energy and Operating Reserve Market and MP shall take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time in respect of such offers.
- (4) In the event that MP receives any compensation or payment from MISO or otherwise for Ancillary Services that were offered or scheduled by MH, MP shall remit such compensation or payment to MH or MP shall request the MISO redirect any such compensation or payments to MH.

2.6 Must Take Fee

MH shall make monthly payments during the Contract Term to MP in accordance with Sections 5.5 and 5.6 in each calendar month of each MTF Contract Year

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(excluding the last calendar month of the Contract Term) determined by the sum of the amounts calculated pursuant to Sections 2.6 (a), (b), (c), (d), (e), and (f) for such MTF Contract Year (“Monthly Must Take Fee”) as follows:

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2.7 Additional Purchase of Energy and/or Power

MH and MP agree to enter into negotiations prior to the end of the Contract Term for additional purchases and sales of energy and/or power on mutually agreeable terms utilizing the available capacity of the 500 kV Transmission Interconnection, provided, however that failure to reach any agreement shall not affect any agreements between MH and MP.

ARTICLE III SCHEDULING AND DELIVERY

3.1 Transmission

- (1) The Parties acknowledge and agree:
 - (a) Transmission service requests have been filed on the MISO OASIS:
 - (i) by MH for 883 MW of northbound transfer capability;
 - (ii) by MP, MH and Wisconsin Public Service Corporation (“WPS”) for 883 MW of southbound transfer capability which includes:
 - (A) MP pursuant to transmission service request 76703672 for 250 MW of southbound transfer capability; and
 - (B) MP pursuant to transmission service request number 79258361 for 133 MW of southbound transfer capability (the “**133 MW US TSR**”); (such filed transmission service requests collectively the “**US TSRs**”),

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and for recognition of such transfer capability as Firm Transmission Service under the TARIFF;

- (b) to accommodate the US TSRs, additions, alterations, and improvements will be required to MP's transmission system (the "**US Upgrades**" which includes without limitation, the 500 kV US Transmission Interconnection);
- (c) a facilities construction agreement would be required to be entered into in accordance with the requirements of MISO for the construction and maintenance of the US Upgrades (the "**US FCA**");
- (d) MH has filed individual transmission service requests on the MH OASIS (such filed transmission service requests collectively the "**Canadian TSRs**") for:
 - (i) a total 883 MW of northbound transfer capability; and
 - (ii) a total 883 MW of southbound transfer capability which includes:
 - (A) 133 MW of southbound transfer capability pursuant to transmission service request number 79622799 (the "**133 MW Canadian TSR**");

and for recognition of such transfer capability as Firm Transmission Service under MH's OATT;

- (e) to accommodate the Canadian TSRs, additions, alterations, and improvements will be required to MH's Transmission Providers transmission system (the "**Canadian Upgrades**" which includes without limitation, the 500 kV Canadian Transmission Interconnection");

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- (f) a facilities construction agreement would be required to be entered into in accordance with the requirements of MH's Transmission Provider for the construction and maintenance of the Canadian Upgrades (the "**Canadian FCA**");
- (g) the US Upgrades and the Canadian Upgrades are expected to consist of the United States portion and the Canadian portion, respectively, of a new 500 kilovolt international transmission interconnection utilizing a route between the Dorsey sub-station in Manitoba and the Blackberry sub-station near Grand Rapids, Minnesota (the Canadian and United States components of the said transmission interconnection collectively referred to the "**500 kV Transmission Interconnection**") (the United States component of the 500 kV Transmission Interconnection referred to as the "**500 kV US Transmission Interconnection**") (the Canadian component of the 500 kV Transmission Interconnection referred to as the "**500 kV Canadian Transmission Interconnection**");
- (h) if a Canadian FCA is entered into, MH agrees it will fund all of the costs for constructing the Canadian Upgrades on the conditions and terms set out in the Canadian FCA and will comply with the provisions of such agreement;
- (i) if a US FCA is entered into, MH agrees it will contribute or cause an Affiliate of MH to contribute to the costs for constructing and maintaining the US Upgrades on the conditions and terms set out in the US FCA or otherwise by separate agreement with MH and/or its Affiliate and MP, and MH and/or its Affiliate and MP, as applicable, agree to comply with the provisions of such agreement(s); and
- (j) if a US FCA is entered into, MP agrees it will contribute to the costs for constructing and maintaining the US Upgrades on the conditions and terms set out in the US FCA or otherwise by separate agreement

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with MH and/or its Affiliate, as applicable, and MP agrees it will comply with the provisions of such agreement(s).

- (2) MH acknowledges and agrees that the Canadian Upgrades, if built and completed, shall enable the provision of Firm Transmission Service in respect of the purchase of the Firm Energy that is made available and sold by MH pursuant to this Agreement to the Delivery Point, subject to:
 - (a) MH receiving from MH's Transmission Provider pursuant to MH's OATT, 133 MW of southbound Firm Transmission Service in respect of the 133 MW Canadian TSR as a result of the Canadian Upgrades being constructed and placed in-service.
- (3) MH agrees:
 - (a) to use Commercially Reasonable Efforts to obtain the Firm Transmission Service referred to in Section 3.1(2)(a) above; and
 - (b) subject to Sections 3.1(1) and 3.1(2)(a) to arrange and pay for Firm Transmission Service for the delivery of the Firm Energy to be made available and sold by MH pursuant to this Agreement to the Delivery Point. Without limiting the generality of the foregoing, MH shall be responsible for the payment of any and all Market Settlement Amounts, transmission charges and associated charges, congestion charges, transmission loss charges and/or transmission energy losses, and all other charges assessed by MH's Transmission Provider for the delivery of the Firm Energy made available and sold by MH pursuant to this Agreement to the Delivery Point. For greater certainty, no provision of this Agreement shall obligate MH and/or any Affiliate of MH to pay for any of the costs of constructing, operating or maintaining the Canadian Upgrades, or any of the costs of constructing, operating and maintaining the US Upgrades and such obligations, will be as set out in the Canadian FCA and the US FCA, as applicable.

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- (4) MP acknowledges and agrees that the US Upgrades, if built and completed, shall enable the provision of Firm Transmission Service, in respect of the purchase of the Firm Energy that is sold by MH and purchased by MP pursuant to this Agreement, from the Delivery Point, subject to:
- (a) MP receiving from MISO, pursuant to the TARIFF, 133 MW of southbound Firm Transmission Service in respect of the 133 MW US TSR as a result of the US Upgrades being constructed and placed in-service.
- (5) MP agrees:
- (a) to use Commercially Reasonable Efforts to obtain the Firm Transmission Service referred to in Section 3.1(4)(a); and
- (b) subject to Sections 3.1(1) and 3.1(4)(a), to arrange and pay for Firm Transmission Service for the delivery of the Firm Energy to be received and purchased by MP pursuant to this Agreement from the Delivery Point. Without limiting the generality of the foregoing, MP shall be responsible for the payment of any and all Market Settlement Amounts, transmission charges and associated charges, congestion charges, transmission loss charges and/or transmission energy losses, and all other charges assessed by MP's Transmission Provider for the delivery of the Firm Energy received and purchased by MP pursuant to this Agreement from the Delivery Point. For greater certainty, no provision of this Agreement shall obligate MP to pay for any of the costs of constructing, operating or maintaining the US Upgrades and such obligations, will be as set out in the US FCA.

3.2 Offers and Scheduling

- (1) MP shall be required to Schedule any of the Firm Energy that has been offered on a Day-Ahead Basis by MH. The Firm Energy that is Scheduled shall be

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Scheduled using the Transmission Service.

- (2) The price at which MH offers all of the Firm Energy pursuant to this Agreement, into the Day-Ahead Energy and Operating Reserve Market, shall be at the sole discretion of MH.
- (3) All Firm Energy that is to be Scheduled shall be Scheduled and provide for delivery up to 133 MWh per hour, over the applicable hour(s) that MH offered Firm Energy on a Day-Ahead Basis during the Contract Term.
- (4) MP shall, if required pursuant to the Market mechanisms in effect at the applicable time, approve any valid NERC E-Tag, prepared pursuant to and in accordance with the applicable Market procedures, associated with any offer of Firm Energy made by MH pursuant to this Agreement into the Day-Ahead Energy and Operating Reserve Market and MP shall take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time in respect of such offers.
- (5) During any hour during the Contract Term that a Purchase and Sale Exclusion Event has occurred, MH shall have no obligation to sell and make available, and MP shall have no obligation to purchase and receive, that quantity of the Firm Energy that is subject to or otherwise applicable to the Purchase and Sale Exclusion Event.
- (6) The Parties shall during the Contract Term Schedule the Firm Energy in a manner that would enable MH to satisfy its obligations under this Agreement utilizing MH's resources, (which includes MH's Electrical Generation Facilities), and/or third party purchases, and/or Markets available to MH and the right to utilize any market mechanisms that are available to MH throughout the Contract Term to satisfy its obligations under this Agreement. Without limiting the generality of the foregoing, the Parties agree that the Market Portal may be utilized at MH's sole discretion to offer and/or Schedule into the MISO market. The Parties further agree that if: **[TRADE SECRET DATA EXCISED]**

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- (7) Each Party shall be responsible for and pay its own costs and expenses associated with the purchase and sale of the Firm Energy under the applicable OATT and/or TARIFF, including without limitation, any Market Settlement Amounts.
- (8) MH shall, where required to submit an offer or electing to submit an offer in the Day-Ahead Energy and Operating Reserve Market for the Firm Energy, subject to the provisions of Section 3.2(10) use a Dispatchable Interchange Schedule with an Offer, in the Day-Ahead Energy and Operating Reserve Market in order to satisfy its obligations under this Agreement, based on the present Scheduling practices and procedures of the TARIFF. MH shall, subject to the provisions of Section 3.2(10), submit such Dispatchable Interchange Schedule with an Offer in accordance with the timing requirements of the MISO Business Practices Manuals. MP shall approve, if required pursuant to the Market mechanisms in effect at the applicable time, the Dispatchable Interchange Schedule with an Offer submitted by MH pursuant to this Agreement and take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time in respect of such Dispatchable Interchange Schedule with an Offer. Notwithstanding the foregoing, including Section 3.2(3), MH may in its sole discretion, utilize the Market Portal to Schedule and/or offer into the MISO market.
- (9) MP acknowledges that during the Contract Term, MH shall have the right to sell energy (“**MH’s Real Time Energy**”), at the Delivery Point, to MP or to the MISO market, using the Transmission Service capability that has not otherwise been utilized under this Agreement, and the Real-Time Energy and Operating Reserve Market: (a) subject to MH paying all incremental Market Settlement Amounts, if any, charged to MP that were directly related to MH’s offer of energy pursuant to this Section 3.2(9) into the Real-Time Energy and Operating Reserve Market; (b) subject to MH receiving the benefit of any Market Settlement Amounts referred to in (a) above; (c) [**TRADE SECRET**

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DATA EXCISED] The Operating Committee shall make and implement decisions and procedures regarding the sale and purchase and delivery and receipt of MH's Real Time Energy.

- (10) As of the Effective Date, the Parties are Market Participants and the terms of Section 3.2(8) reflects the Scheduling practices and procedures of the TARIFF. The Parties further acknowledge that in the event that, at any time after the Effective Date and prior to the end of the Contract Term: (i) either one or both of the Parties is no longer a Market Participant; or (ii) the TARIFF or the MISO Business Practices Manuals are no longer in effect or are revised, to the extent that the requirements of Sections 3.2(8) would, if complied with by either Party, achieve a result that would be materially inconsistent with the rights and obligations of the Parties pursuant to the other provisions of this Agreement; or (iii) the MISO market no longer exists, the Parties agree that a new Scheduling mechanism which is consistent with the rights and obligations of the Parties pursuant to this Agreement shall be established including: (A) MP purchasing and taking title to all of the Firm Energy at the Delivery Point and paying for same; and (B) the Parties shall during the Contract Term Schedule the Firm Energy in a manner that would enable MH to satisfy its obligations under this Agreement utilizing MH's resources, (which includes MH's Electrical Generation Facilities), and/or third party purchases, and/or Markets available to MH and the right to utilize any market mechanisms that are available to MH throughout the Contract Term to satisfy its obligations under this Agreement; and make such other necessary amendments to this Agreement to reflect the new Scheduling mechanism, and the Parties agree to direct the Operating Committee to immediately enter into good faith negotiations to establish such new Scheduling mechanism and make such other necessary amendments to this Agreement to reflect the new Scheduling mechanism, failing which the establishment of a new Scheduling mechanism and other amendments to this Agreement shall be determined pursuant to

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Article XVI on the condition that they are consistent with the rights and obligations of the Parties under this Agreement prior to the revision.

- (11) The Parties further acknowledge that in the event that, at any time after the Effective Date and prior to the end of the Contract Term: (i) either one or both of the Parties is no longer a Market Participant; or (ii) the MISO market no longer exists; and the Parties are participants in different Centrally Operated Markets or one or both of the Parties is not a participant in a Centrally Operated Market, the Parties agree that the “must take” provisions of this Agreement applicable to the Firm Energy shall no longer apply and the Parties shall mutually agree on what quantity, if any, of Firm Energy that MH shall be required to sell to MP and MP shall be required to purchase from MH, but that the “must take” provisions of this Agreement shall continue to apply to all of the Firm Energy if the Parties are participants in the same Centrally Operated Market.
- (12) The Parties further acknowledge and agree that in the event that, at any time after the Effective Date and prior to the end of the Contract Term either one or both of the Parties is no longer a Market Participant and one Party is a participant in a Centrally Operated Market that is different from the Centrally Operated Market in which the other Party participates: (i) where one Party is still a participant in the MISO market, the Party that is no longer a participant in the MISO market shall pay all Seams Costs incurred by the Parties in respect of the sale and purchase and delivery of the Firm Energy; and (ii) where neither Party is a participant in the MISO market the Seams Costs incurred by the Parties in respect of the sale and purchase and delivery of the Firm Energy shall be accounted for and allocated between the Parties in an equitable and fair manner taking into account all of the circumstances associated with the Parties incurring such costs.

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- (13) The Parties further acknowledge that in the event that, at any time after the Effective Date and prior to the end of the Contract Term: (i) either one or both of the Parties is no longer a Market Participant; or (ii) the TARIFF or the Market Business Practices Manuals are no longer in effect or are substantially revised; or (iii) the MISO market no longer exists, the Operating Committee will meet, consult in good faith, and consistent with Section 9.1(3)(d), make recommendations to the Parties about what amendments or revisions to the Agreement (if any) would be appropriate to address one or both Parties not being a Market Participant, the TARIFF changes or the end of the MISO market. The Operating Committee shall also keep a record of changes to the TARIFF that could impact on the scope and meaning of the Agreement and consistent with Section 9.1(3) make recommendations to the Parties about what amendments or revisions to the Agreement (if any) would be appropriate to address the TARIFF changes.
- (14) Capitalized terms used in this Section 3.2 and not otherwise defined in this Agreement shall have the meanings prescribed in the TARIFF or the MISO Business Practices Manual for Definitions.

3.3 Transmission System Operations

The Parties acknowledge that, as of the Effective Date, their respective Transmission Providers operate their transmission systems pursuant to the provisions of an OATT. Nothing in this Agreement shall obligate either Party or their respective Transmission Providers to maintain an OATT in effect during the Contract Term. Notwithstanding Section 3.1, in the event that either Party's Transmission Provider ceases to maintain an OATT at any time during the Contract Term, that Party agrees that it shall use Commercially Reasonable Effort to obtain sufficient transmission capacity for delivery of the applicable amount of the Firm Energy to/from the Delivery Point, as applicable.

3.4 MH's Energy Curtailments and Decrements

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- (1) MH shall have the right to curtail, restrict, or reduce the sale and supply of any of the Firm Energy in accordance with any of the following provisions:
 - (a) during any period(s) of time during the Contract Term, if there is either an: (A) Unavailability of MH's Purchased Power; or (B) all or a portion of MH's Electrical Generation Facilities' capacity is unavailable due to: (i) forced outages of one or more generating unit(s); or (ii) derates of one or more generating unit(s) caused by low water flow or other reason; or (iii) the unavailability of generation outlet capacity caused by a forced outage or derate of MH's HVDC System; or (iv) scheduled outages of generating unit(s) or MH's HVDC System, to the extent that such scheduled outages are reasonably necessary to avoid equipment damage to facilities or to avoid the deferral of normal or scheduled maintenance beyond that consistent with Good Hydro Utility Practice, and if and to the extent that such Unavailability of MH's Purchased Power or outages or derates, as referenced in any of clauses (i), (ii), (iii) or (iv), cause MH to have insufficient energy to serve MH's Energy Commitments, the Firm Energy may be curtailed, restricted or reduced by MH by the amount, if any, determined after application of the Priority Criteria; or
 - (b) during any period(s) of time during the Contract Term, if and to the extent a Force Majeure event or circumstance(s) otherwise precludes MH's ability to make available, or to continue to make available, any of the Firm Energy in accordance with this Agreement, then to that extent the Firm Energy, may be curtailed, restricted or reduced by MH by the amount, if any, determined after application of the Priority Criteria; or
 - (c) if and to the extent necessary to avoid curtailing, restricting or reducing service to MH's End-Use Load, in a manner consistent with and to the extent authorized by "Requirement 6.3 of NERC Standard EOP-002" or its successor requirements.

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(2) MH shall have the right to decrement the Minimum Annual Energy Amount, if applicable for a Contract Year, when during that Contract Year:

- (a) there is either an: (A) Unavailability of MH's Purchased or Sold Power; or (B) all or a portion of MH's Electrical Generation Facilities capacity is unavailable due to: (i) forced outages of one or more generating unit(s); or (ii) derates of one or more generating unit(s) caused by low water flow or other reason; or (iii) the unavailability of generation outlet capacity caused by a forced outage or derate of MH's HVDC System; or (iv) scheduled outages of generating unit(s) or MH's HVDC System, to the extent that such scheduled outages are reasonably necessary to avoid equipment damage to facilities or to avoid the deferral of normal or scheduled maintenance beyond that consistent with Good Hydro Utility Practice, and if and to the extent that such Unavailability of MH's Purchased or Sold Power or outages or derates, as referenced in any of clauses (i), (ii), (iii) or (iv) cause MH to have insufficient energy to serve MH's Energy Commitments; or
- (b) a Force Majeure event or circumstance precludes MH's ability to have energy available to offer to MP in accordance with this Agreement,

(each of the events referred to in (a) and (b) of this Section 3.4(2) is referred to as an "**MH Minimum Annual Energy Decrement Event**"),

by the amount, if any, determined in accordance with the provisions of Section 3.10(a). For greater certainty, a MH Minimum Annual Energy Decrement Event can occur and continue only during a period of time during the Contract Term when MH has not offered energy to MP pursuant to this Agreement but can not occur during a period of time for which MH has offered energy to MP in accordance with this Agreement. The Parties also acknowledge and agree that any Firm Energy amount that is offered by MH and curtailed pursuant to Section 3.4(1) shall, notwithstanding such curtailment, be credited to MH as

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part of the Minimum Annual Energy Amount, if applicable, for a Contract Year, that MH was to have offered and made available during the applicable Contract Year, in accordance with Section 2.1.

- (3) In the event of the exercise by MH of the right pursuant to Section 3.4(1) to curtail, restrict or reduce any of the Firm Energy, MH shall:
 - (a) subject to Section 3.4(3)(c) exercise that right only for an amount and for the applicable time period(s), after application of the Priority Criteria, that MH determines is necessary to respond to the circumstance giving rise to this right to curtail, restrict or reduce any of the Firm Energy; and
 - (b) exercise Good Hydro Utility Practice to overcome the circumstances giving rise to this right, provided however that MP hereby acknowledges and agrees that the exercise of Good Hydro Utility Practice would not obligate MH to make additional purchases of energy from a third party and/or the Markets.
- (4) In the event MH curtails, restricts, or reduces the supply of any of the Firm Energy that has already been accepted into the MISO market or cleared the Day-Ahead Energy and Operating Reserve Market, as applicable (“**MH’s Curtailment of Cleared Firm Energy**”), MH shall be responsible for any Market Settlement Amounts charged to MP that were directly related to the curtailment, restriction or reduction in the supply of the Firm Energy due to MH’s Curtailment of Cleared Firm Energy under the applicable OATT and/or TARIFF.

3.5 Curtailment Priority Criteria

In the event of the exercise by MH of the right granted pursuant to Section 3.4(1) to curtail, restrict or reduce any of the Firm Energy, then the following priority criteria (the “**Priority Criteria**”) shall be used by MH to determine

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the amount of any of the Firm Energy for the applicable time period(s) that shall be subject to curtailment, restriction or reduction, if applicable, for a Contract Year:

- (a) MH's End-Use Load shall have priority over all other power and energy sales of MH;
- (b) any power and/or energy sale by MH that is associated with planning capacity and is not part of MH's End Use Load shall take priority over all other power and energy sales of MH, except for MH's End-Use Load;
- (c) all of MH's Firm LD Energy Sales and MH's Firm Energy Sales shall take priority over all other power and/or energy sales of MH, except for those referred to in categories (a) and (b) above;
- (d) all other power and/or energy sales by MH except for those referred to in categories (a), (b) and (c) above shall have the lowest priority; and
- (e) in the event that more than one power and/or energy sale of the same types referred to in categories (b), and (c) of this Section 3.5 exists, curtailment with respect to such power or energy sales within that category shall be determined on a pro rata basis.

The Parties acknowledge that the purchase and sale of the Firm Energy pursuant to this Agreement is part of Section 3.5(c).

3.6 Option to Continue Deliveries

MP acknowledges and agrees that: (a) no provision in this Agreement requires MH to implement the right granted pursuant to Sections 3.4(1) to curtail, restrict or reduce the Firm Energy; (b) MH retains the right to supply the applicable amount of the Firm Energy, under conditions which give rise to the right to curtail, restrict or reduce the applicable amount of the Firm Energy under Section 3.4(1), from any of MH's Electrical Generation Facilities, third party purchases, Markets or market mechanisms available to MH, during any period of time, for which this right exists, provided MH does so for the entire period of time during which it had the right pursuant to Section 3.4(1) to curtail, restrict or reduce the applicable amount of the Firm Energy to be

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supplied and does not selectively assert the right to provide the applicable amount of the Firm Energy in only some, but not all, hours of the period of time when it would otherwise have the right to curtail, restrict or reduce the applicable amount of the Firm Energy; and (c) in conjunction with the implementation of the right granted pursuant to Section 3.4(1) to curtail, restrict or reduce any of the applicable amount of the Firm Energy and MH's covenant to do so in accordance with the provisions of Section 3.5 and the Priority Criteria referenced therein, MH shall have the right, but not the obligation, to curtail, restrict or reduce one type of its power and/or energy sales and not another type of its power and/or energy sales even though under the Priority Criteria the power and/or energy sale that was curtailed had a higher priority. The exercise of the right under Section 3.6(c) is subject to MH continuing to provide service, through purchases made from third parties, Markets and/or Market mechanisms available to MH, to the power and/or energy sale that was not curtailed despite having a lower priority. For greater certainty the exercise of the right under Section 3.6(c) does not restrict or limit MH's right granted pursuant to Section 3.4(1) to curtail, restrict or reduce the applicable amount of the Firm Energy.

3.7 Transmission Provider Curtailments and Decrements

- (1) In the event that the Transmission Provider(s) of MH and/or MP reduces or curtails the Firm Transmission Service designated, allocated or required for the delivery of the Firm Energy, the Firm Energy that is to be supplied by MH and received by MP shall be curtailed, restricted or reduced in accordance with the provisions of that Transmission Provider's OATT. The Parties also agree that where MH has been unable to obtain sufficient quantities of Net Scheduled Interchange including "ramp capability" to have its offer for the energy clear the Day-Ahead Energy and Operating Reserve Market, the quantity of the Firm Energy that did not clear the said market shall be deemed to have been curtailed pursuant to this Section 3.7(1).
- (2) Subject to Section 19.3, in the event MH, MH's Transmission Provider or MP's Transmission Provider ceases to have an OATT, curtailment or reduction of Firm Energy Schedules hereunder in order to maintain the reliable

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operation of the interconnected AC transmission system shall be implemented exclusively in accordance with this Section. Curtailment of energy deliveries under this Section to accommodate such events shall be implemented as follows, in the order specified, until the required amount of loading relief has been obtained: (a) all transmission service or transactions that are lower than Firm Transmission Service, and which contribute to the condition requiring curtailment, shall be curtailed first; (b) the applicable Party shall use Commercially Reasonable Efforts to cause the curtailing Person to redispatch its generation system to continue the Schedules hereunder consistent with producing the desired loading mitigation upon the congested facility(s); and (c) to the extent all transactions identified in clause (a) of this Section 3.7(2) are curtailed and system redispatch is not sufficient to produce the necessary mitigation that would avoid curtailment of the Schedules under this Agreement, the transaction curtailment priority used by MH relative to all uses of such AC transmission system at the time shall be implemented in a comparable and non-discriminatory manner.

- (3) In the event that the Transmission Provider(s) of MH and/or MP reduces or curtails the Firm Transmission Service designated, allocated or required for the delivery of the energy offered by MH to MP pursuant to this Agreement (“**Transmission Minimum Annual Energy Decrement Event**”), the Minimum Annual Energy Amount, if applicable for a Contract Year, shall be decremented by the amount determined in accordance with Section 3.10(b), during the period of such Transmission Minimum Annual Energy Decrement Event. For greater certainty, a Transmission Minimum Annual Energy Decrement Event can occur and continue only during a period of time when MH has not offered energy to MP pursuant to this Agreement but can not occur during a period of time for which MH has offered energy to MP in accordance with this Agreement. The Parties also acknowledge and agree that any Firm Energy amount that is offered by MH and curtailed pursuant to Section 3.7(1) shall, notwithstanding such curtailment, be credited to MH as

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part of the Minimum Annual Energy Amount, if applicable, for a Contract Year, that MH was to have offered and made available during the applicable Contract Year, in accordance with Section 2.1.

3.8 MP's Curtailments and Decrements

- (1) MP shall have the right to refuse to accept and purchase such quantity of the energy offered by MH pursuant to this Agreement to the extent a Force Majeure event or circumstance(s) precludes MP's ability to accept such quantity of the energy that is offered by MH pursuant to this Agreement.
- (2) In the event MP refuses to accept any of the Firm Energy, pursuant to Section 3.8(1), that has already been accepted into the MISO market or cleared the Day-Ahead Energy and Operating Reserve Market, as applicable ("**MP's Curtailment of MH's Cleared Energy**"), MP shall be responsible for any Market Settlement Amounts charged to MH that were directly related to the curtailment, restriction or reduction in the supply of the Firm Energy due to MP's Curtailment of MH's Cleared Energy under the applicable OATT and/or TARIFF.
- (3) The Minimum Annual Energy Amount, if applicable for a Contract Year, shall be decremented when a Force Majeure event or circumstance would preclude MP from accepting energy from MH under this Agreement ("**MP Minimum Annual Energy Decrement Event**"), during the period of such MP Minimum Annual Energy Decrement Event, by the amount determined in accordance with Section 3.10(c). For greater certainty, a MP Minimum Annual Energy Decrement Event: (i) can occur and continue only during a period of time when MH has not offered energy to MP pursuant to this Agreement; (ii) will occur if MH has not offered energy to MP, if MP has advised MH that a Force Majeure event or circumstance, in accordance with the provisions of this Agreement, would prevent MP from accepting energy from MH under this Agreement; and (iii) can not occur during a period of time for which MH has offered energy to MP in accordance with this Agreement. The Parties also

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acknowledge and agree that any Firm Energy amount that is offered by MH and is curtailed pursuant to Section 3.8(1) shall, notwithstanding such curtailment, be credited to MH as part of the Minimum Annual Energy Amount, if applicable, for a Contract Year, that MH was to have offered and made available during the applicable Contract Year, in accordance with Section 2.1.

3.9 Curtailement and/or Decrementing Notices

Each Party shall provide as much notice as practicable to the other Party regarding: (i) the curtailment, restriction or reduction or refusal of the supply or acceptance, as applicable, of the Firm Energy and/or the energy offered by MH, as applicable; and/or (ii) the decrementing of the Minimum Annual Energy Amount, if applicable for a Contract Year, in each instance pursuant to the applicable subsections of Sections 3.4, 3.7 and 3.8 and Article XIII. Such notices shall include the anticipated duration and amount of: (a) the curtailment, restriction, or reduction or refusal of the supply or acceptance, as applicable, of the Firm Energy and where practicable, daily updates; and/or (b) the decrementing of the Minimum Annual Energy Amount, if applicable for a Contract Year, and where practicable daily updates.

3.10 Minimum Annual Energy

The Minimum Annual Energy Amount, if applicable for a Contract Year, shall be decremented:

- (a) for each MH Minimum Annual Energy Decrement Event that occurs during the applicable Contract Year, that MH has determined it will exercise its right to decrement the Minimum Annual Energy Amount, by the amount determined from multiplying: (i) the duration (in hours) of the applicable MH Minimum Annual Energy Decrement Event; and (ii) [**TRADE SECRET DATA EXCISED**];
- (b) for each Transmission Minimum Annual Energy Decrement Event that occurs

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during the applicable Contract Year, by the amount determined from multiplying: (i) the duration (in hours) of the Transmission Minimum Annual Energy Decrement Event; and (ii) [TRADE SECRET DATA EXCISED]; and

- (c) for each MP Minimum Annual Energy Decrement Event that occurs during the applicable Contract Year, by the amount determined from multiplying (i) the duration (in hours) of the MP Minimum Annual Energy Decrement Event; and (ii) [TRADE SECRET DATA EXCISED].

3.11 Contingency Reserves, Contingency Reserves Emergency Energy, and Emergency Energy

The Parties acknowledge and agree that:

- (a) Contingency Reserves and Contingency Reserves Emergency Energy made available by MH to MISO during the Contract Term pursuant to MH's NERC Contingency Reserve obligations shall not be considered to be Firm Energy;
- (b) Emergency Energy made available by MH to MISO during the Contract Term shall not be considered to be Firm Energy;
- (c) MH shall have the right to deliver during the Contract Term Contingency Reserves, Contingency Reserves Emergency Energy and Emergency Energy using the Transmission Service;
- (d) all payments received by MP from a Transmission Provider for Contingency Reserves, Contingency Reserves Emergency Energy and/or Emergency Energy made available to MISO by MH during the Contract Term which are received by MP by virtue of MP's rights in and to the Transmission Service or otherwise shall be remitted by MP to MH in the month following MP's receipt of said payments; and
- (e) all costs associated with Contingency Reserves, Contingency Reserves Emergency Energy and/or Emergency Energy charged to MH by MISO which are attributable to MP during the Contract Term shall be billed to MP by MH and shall be paid by MP in the month following MP's receipt of the billing for

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said costs to the extent MH is not compensated by MISO for the said costs.

**ARTICLE IV
ENERGY PRICING**

4.1 Energy Pricing

[TRADE SECRET DATA EXCISED]

**ARTICLE V
BILLING AND PAYMENT**

5.1 Dollar Amounts

All dollar amounts set forth in this Agreement, monetary transactions, accounting and cost calculations between MH and MP shall be determined and stated in U.S. Dollars.

5.2 Payment in U.S. Dollars

Payment of all invoices pursuant to this Agreement shall be made in U.S. Dollars.

5.3 Method of Payment of Invoices

Payment of all invoices pursuant to this Agreement shall be made by the Party required to make the payment to the Party entitled to receive the payment by electronic bank transfer or by other mutually agreeable method(s), to the bank designated in Appendix C attached hereto. A Party may change the designation of the bank set out in Appendix C by notice to the other Party in accordance with Section 19.1 hereof. Payment shall be deemed to be made when received by the bank designated in Appendix C.

5.4 Rendering Invoices

Unless otherwise specifically agreed upon by the Parties, the calendar month shall be the standard billing period for all invoices rendered under this Agreement. As soon as practicable after the end of each calendar month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

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5.5 Payment Amounts

- (1) Subject to Section 5.5(2), the amount payable by MP to MH for each month during the Contract Term shall be determined as follows:
- (a) the sum of the amount determined for each applicable hour that a quantity was Scheduled for that month determined as follows:
 - (i) [TRADE SECRET DATA EXCISED]; less
 - (b) the sum of the amount determined for each applicable hour that a quantity of Firm Energy that had been Scheduled during any day for that month was curtailed, restricted or reduced pursuant to Sections 3.4, 3.7 or 3.8 or Article XIII as follows:
 - (i) [TRADE SECRET DATA EXCISED]; plus
 - (c) the amount of all payments received by MP during that month from a Transmission Provider for Contingency Reserves, Contingency Reserves Emergency Energy and/or Emergency Energy made available to the MISO by MH during the Contract Term which are received by MP by virtue of MP's rights in and to the Transmission Service or otherwise as provided in Section 3.11(d); plus
 - (d) the amount of all costs associated with Contingency Reserves, Contingency Reserves Emergency Energy and/or Emergency Energy charged to MH by the MISO during that month which are attributable to MP during the Contract Term (to the extent MH is not compensated by the MISO for the said costs) as provided in Section 3.11(e); plus
 - (e) any costs and expenses associated with the supply and receipt of the Firm Energy under the applicable OATT that were: (i) billed to and paid by MH during that month; or (ii) billed to MH during a prior month and paid by MH during that month, but were amounts that were required to be paid by MP pursuant to Sections 3.2(7); less
 - (f) any costs and expenses associated with the supply and receipt of the Firm Energy under the applicable OATT that were: (i) billed to and

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paid by MP during that month; or (ii) billed to MP during a prior month and paid by MH during that month, but were amounts that were required to be paid by MH pursuant to Section 3.2(7); plus

- (g) any Market Settlement Amounts: (i) charged to and paid by MH during that month; or (ii) charged to MH during a prior month and paid by MH during that month, that were directly related to the curtailment, restriction or reduction in supply of Firm Energy due to MP's Curtailment of MH's Cleared Firm Energy under the applicable OATT and/or the TARIFF but were amounts that were required to be paid by MP pursuant to Section 3.8(2); less
- (h) any Market Settlement Amounts: (i) charged to and paid by MP during that month; or (ii) charged to MP during a prior month and paid by MP during that month, that were directly related to the curtailment, restriction or reduction in supply of Firm Energy due to MH's Curtailment of Cleared Firm Energy under the applicable OATT and/or the TARIFF but were amounts that were required to be paid by MH pursuant to Section 3.4(4).

(2) [TRADE SECRET DATA EXCISED]

5.6 Payment Date

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the third (3rd) Business Day after receipt of the invoice. Any amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Interest Rate and such interest shall be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

5.7 Estimates

In the event that not all of the information necessary for the preparation of the monthly invoice is known in time for the preparation of the monthly invoice,

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estimates may be used on the monthly invoice to be followed with an adjustment on a future invoice to reflect actual charges as soon as they are known. In the event that the amount paid or payable on any invoice or invoices delivered pursuant to this Agreement is based, in whole or in part, upon third party invoices and the third party subsequently adjusts their invoice, MH shall charge or credit MP for the change in such third party invoice within sixty (60) Business Days of MH's receipt of such adjusted third party invoice.

5.8 Billing Adjustments and Disputes

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the invoice, as invoiced, shall be required to be made when due. Notice of the dispute shall be given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment or reimbursement shall be made within ten (10) Business Days after the date of such resolution, along with interest accrued at the Interest Rate from and including the date the payment was originally to be made by the disputing Party to but excluding the date the payment or reimbursement is paid. Inadvertent overpayments shall be deducted by the Party receiving such overpayment from subsequent weekly invoices rendered by such Party. Any dispute with respect to an invoice or adjustment is waived unless the other Party is notified in accordance with this Section 5.8 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made.

5.9 Netting

- (1) The billing departments of each of the Parties shall exchange settlement data under each of the MH/MP Agreements. A netting computation of the amount that each Party has determined is due and owing under each of the MH/MP Agreements for the applicable billing period shall be performed by each of the

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Parties by the third (3) Business Day following the last day of each month. If the Parties are in agreement as to the net amount owing by a Party under the MH/MP Agreements, that net amount shall be paid by that Party by the date referenced in Section 5.6. If the net amount agreed upon is not paid by that date, or if the Parties are unable to agree on the net amount to be paid, all of the provisions of each of the MH/MP Agreements, including the billing and payment provisions shall continue to govern the payment obligations of each Party, and all amounts due under this Agreement shall be paid in full on the date payment is required to be made under this Agreement.

- (2) The payment by a Defaulting Party of any amounts due under each of the MH/MP Agreements shall be a condition precedent to the payment of any amounts due by the Non-defaulting Party to the Defaulting Party under any of the MH/MP Agreements.

5.10 Payment in Full

If the Parties subsequently mutually agree not to net payments pursuant to Section 5.9 or only one Party owes a debt or obligation to the other during the applicable billing period, including, but not limited to, any interest, and payments or credits, that Party shall pay such sum in full when due.

5.11 Impact of Performance Assurance

Except in connection with a termination in accordance with Article XVII in which circumstances the Party benefiting from the Performance Assurance notifies the other Party in writing, amounts invoiced pursuant to this Article V shall not take into account or include any Performance Assurance which may be in effect to secure a Party's performance under this Agreement.

5.12 Accounting and Billing Procedures

The Operating Committee may make and implement decisions regarding the creation and revision, from time to time, of accounting and billing procedures necessary to

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implement the terms and conditions of this Agreement, including the provisions of Article V.

5.13 Preliminary Billing Information

The Parties shall exchange preliminary billing information in accordance with the accounting and billing procedures established by the Operating Committee.

ARTICLE VI**GOVERNMENTAL CHARGES****6.1 Governmental Charges**

Each Party shall be solely responsible for and shall pay or cause to be paid all Governmental Charges imposed on that Party in respect of any matters related to this Agreement. In the event MH is required by law or regulation to remit or pay Governmental Charges that are MP's responsibility hereunder, MP shall promptly reimburse MH for such Governmental Charges. In the event MP is required by law or regulation to remit or pay Governmental Charges that are MH's responsibility hereunder, MH shall promptly reimburse MP for such Governmental Charges. For greater certainty, the Parties agree and acknowledge that, as of the Effective Date, MP is a non-resident, non-registrant not carrying on business in Canada in respect of all supplies hereunder for Canadian federal goods and services tax purposes.

6.2 Assistance

Each Party shall provide reasonable assistance to the other Party in connection with and for the purpose of enabling due compliance with Governmental Charges and all associated information, documentation and reporting obligations. Each Party shall provide to the other and to a Governmental Authority having jurisdiction such forms, returns, reports, documents, elections, written declarations, certificates, etc. as the other Party may reasonably request, including without limitation any documentation that may be required to substantiate any available exemptions or relief from Governmental Charges.

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ARTICLE VII**METERING****7.1 Metering**

All applicable matters relating to the metering of the Firm Energy shall be determined in accordance with the applicable provisions of agreements between the Parties' Transmission Providers relating to revenue metering, and the application of the provisions of such agreements shall, if necessary, be referred to the Operating Committee.

ARTICLE VIII**ENVIRONMENTAL ATTRIBUTES****8.1 Environmental Attributes of Firm Energy**

- (1) The Parties acknowledge and agree that MH shall allocate and transfer to MP that amount of Environmental Attributes (the “[**TRADE SECRET DATA EXCISED**] **Environmental Attributes**”) determined by MH, only for the purposes of allocating and transferring Environmental Attributes pursuant to Section 8.2 and Section 8.4, to be from that portion of the MWh of Firm Energy that was: (a) Supplied Energy; and (b) allocated or determined by MH, only for the purpose of allocating and transferring Environmental Attributes, to be sourced from [**TRADE SECRET DATA EXCISED**].
- (2) The Parties acknowledge and agree that for environmental reporting purposes, the Environmental Attributes of that component of the Firm Energy that: (a) is Supplied Energy; and (b) is not allocated or determined by MH in accordance to be sourced from [**TRADE SECRET DATA EXCISED**] in accordance with this Article XIII, shall be reported, as being electrical energy which is sourced from the [**TRADE SECRET DATA EXCISED**] MH's Energy Resources stipulated by MH in accordance with this Article VIII.
- (3) The Parties further acknowledge and agree that for environmental reporting purposes, the Environmental Attributes of that component of the Firm Energy,

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that is not Supplied Energy, is electrical energy which is not sourced from any specific generation type or resource and has Environmental Attributes equivalent to energy that is associated with the applicable market in which the majority of MP's load is physically situated and shall be reported by each of the Parties, in that manner, in any reports that are filed by each of the Parties in respect of the purchase and sale of the Firm Energy pursuant to this Agreement.

- (4) MH shall not be obligated to manage the supply of the Firm Energy in any particular manner, nor does this Agreement restrict or limit MH to any specific type(s) of generating resources to be used to supply the Firm Energy (including energy obtained from third party purchases and/or the Markets available to MH, regardless of the generation type used by the third party or which generating resources may have been attributable to the energy accessed through the Markets), nor shall any provision in this Agreement constitute a representation or warranty by MH that the Firm Energy is supplied from a particular generating resource, including renewable resources.
- (5) The Parties acknowledge and agree that the consideration for the [**TRADE SECRET DATA EXCISED**] Environmental Attributes is included in the price for the Firm Energy.
- (6) Without limiting the reporting requirements referred to in Section 8.1(2), the Parties further acknowledge and agree that MH has retained all Environmental Attributes for the Firm Energy allocated or determined by MH for the purposes of this Article to be sourced from those MH's Energy Resources that are [**TRADE SECRET DATA EXCISED**], as referred to in this Article VIII. For greater certainty [**TRADE SECRET DATA EXCISED**] is not included as part of MH's Energy Resources and in the event that the Environmental Attributes of energy from [**TRADE SECRET DATA EXCISED**], including any form of credits are, notwithstanding the provisions of this Article VIII, received by MP, MP agrees: (i) to assign and transfer the said Environmental Attributes of [**TRADE SECRET DATA EXCISED**] to MH, in such manner

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as MH may request, acting reasonably; (ii) to cooperate with MH in making any required filing with any Governmental Authority or other Person in respect of the assignment and transfer referred to in (i); and (iii) in the event applicable laws or rules governing any applicable Market prevents or restricts the assignment or transfer referred to in (i), MP agrees to [**TRADE SECRET DATA EXCISED**].

- (7) The Parties acknowledge and agree that MH shall be entitled to revise or amend Appendix B, with reasonable notice to MP, to [**TRADE SECRET DATA EXCISED**].

8.2 Calculation of Environmental Attributes

- (1) MH shall calculate the Environmental Attributes of the Supplied Energy purchased by MP, for the purposes of this Article VIII during the Contract Term in the following manner:

(a) [**TRADE SECRET DATA EXCISED**]

8.3 Reporting of Environmental Attributes

- (1) On or before March 31st of each calendar year, MH shall provide MP with a report, for each preceding calendar year or applicable portion thereof, during the Contract Term, in accordance with the procedures established by MH for such reporting, that identifies the MWh of the Firm Energy that was supplied from MH's Energy Resources and the MWh of the Firm Energy that is not Supplied Energy and the Environmental Attributes of each of MH's Energy Resources.
- (2) The Parties acknowledge and agree that the report referred to above shall be used by MH and MP when reporting the Environmental Attributes of the Firm Energy.

8.4 Transfer of Environmental Attributes

- (1) MH shall transfer to MP the [**TRADE SECRET DATA EXCISED**]

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Environmental Attributes applicable for each calendar year during the Contract Term, on or before March 31st of the subsequent calendar year.

- (2) For MH's Energy Resources that [TRADE SECRET DATA EXCISED] are registered by MH on a system used to track and transfer Environmental Attributes and used by MH to transfer [TRADE SECRET DATA EXCISED] (the "Transfer System"), MP shall receive the transfer of the applicable amount of [TRADE SECRET DATA EXCISED] Environmental Attributes through the Transfer System. MH's transfer through the Transfer System will be on the condition that MP complies, at its own expense, with the Transfer System requirements concerning the acceptance of the transferred [TRADE SECRET DATA EXCISED] Environmental Attributes.
- (3) If any of MH's Energy Resources [TRADE SECRET DATA EXCISED] are not registered by MH on a Transfer System, MP shall receive the transfer of the applicable amount of the [TRADE SECRET DATA EXCISED] Environmental Attributes from MH, by MH providing a transfer substantially in the form used by MH generally for the transfer of Environmental Attributes.
- (4) Subject to Section 8.4(5), MH shall be responsible for all costs required for MH to be a member of, access and utilize the Transfer System for the recording, transfer and receipt of the [TRADE SECRET DATA EXCISED] Environmental Attributes.
- (5) MP shall be responsible for all costs required for MP to be a member, access and utilize the Transfer System for the recording, transfer and receipt of the [TRADE SECRET DATA EXCISED] Environmental Attributes.
- (6) No actions shall be required to be undertaken by MH in respect of the transfer to MP of the [TRADE SECRET DATA EXCISED] Environmental Attributes, except as expressly provided herein

8.5 Use

MP may use any and all of the [TRADE SECRET DATA EXCISED] Environmental Attributes at its sole discretion and for MP's sole benefit, including without limitation the re-sale of the [TRADE SECRET DATA EXCISED]

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Environmental Attributes.

8.6 Rights Conferred by Law

In the event that the [TRADE SECRET DATA EXCISED] Environmental Attributes are conferred by statute or other legal instrument to MH, MH shall transfer the [TRADE SECRET DATA EXCISED] Environmental Attributes to MP in accordance with MH's procedures and the terms of this Agreement provided that MH has the legal authority for so doing. If MH does not have the legal authority to transfer the [TRADE SECRET DATA EXCISED] Environmental Attributes to MP, then MH shall use Commercially Reasonable Efforts to obtain such legal authority.

8.7 MP Qualification

To the extent allowed by applicable law, MP may have the [TRADE SECRET DATA EXCISED] Environmental Attributes qualified and recognized as environmental credits or offsets, if any. MH shall cooperate in such qualification and recognition in accordance with the procedures that it uses or applies generally to the qualification and recognition of [TRADE SECRET DATA EXCISED] Environmental Attributes. Without limiting the generality of Section 8.9 and Section 18.1, neither Party makes any representation or warranty with respect to any future action or failure to act, or approval or failure to approve, by any Governmental Authority or any other third Person in respect of the allocation and transfer of the [TRADE SECRET DATA EXCISED] Environmental Attributes.

8.8 [TRADE SECRET DATA EXCISED]

[TRADE SECRET DATA EXCISED]

8.9 Disclaimer

WITH RESPECT TO THE [TRADE SECRET DATA EXCISED] ENVIRONMENTAL ATTRIBUTES TO BE TRANSFERRED UNDER THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, MH EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS

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OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MH MAKES NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING THE SUITABILITY OR LIKELIHOOD OF THE [TRADE SECRET DATA EXCISED] ENVIRONMENTAL ATTRIBUTES TO MEET OR QUALIFY UNDER ANY VOLUNTARY OR MANDATORY PROGRAM PERTAINING TO THE GENERATION OF “GREEN” OR CARBON NEUTRAL ELECTRIC POWER OR REGARDING ANY CREATION OF A FEDERAL, STATE OR LOCAL MANDATORY OR VOLUNTARY RENEWABLE PORTFOLIO STANDARD OR CARBON OFFSET OR ALLOWANCE TRADING PROGRAM UNDER WHICH THE [TRADE SECRET DATA EXCISED] ENVIRONMENTAL ATTRIBUTES COULD BE SOLD, TRANSFERRED OR USED FOR COMPLIANCE.

ARTICLE IX
OPERATING COMMITTEE

9.1 Operating Committee

- (1) A committee (the “**Operating Committee**”) is hereby constituted consisting of the Division Manager of Power Sales & Operations for MH or a duly authorized delegate from MH, and the Vice-President Strategy and Planning for MP or a duly authorized delegate from MP. Both MH and MP shall have one vote on the Operating Committee, and all decisions of the Operating Committee must be unanimous to be effective.
- (2) The Operating Committee shall meet at the written request of either of its members within ten (10) Business Days of receipt of such request. Written minutes shall be kept of all meetings and decisions and copies of such minutes shall be distributed to the Operating Committee members and the Parties within five (5) Business Days after each meeting.
- (3) The Operating Committee may:
 - (a) make and implement decisions regarding the creation and revision, from time to time, of accounting and billing procedures necessary to

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implement the terms and conditions of this Agreement in accordance with Sections 5.11 and 5.12;

- (b) make and implement decisions and procedures regarding Scheduling from time to time as necessary to implement the terms and conditions of this Agreement in accordance with Section 3.2;
- (c) make and implement decisions and procedures regarding the sale and purchase and delivery and receipt of MH's Real Time Energy in accordance with Section 3.2(9);
- (d) make and implement decisions for operating procedures for the conduct of meetings and the recording of minutes;
- (e) make recommendations to the Parties concerning amendment and revision of this Agreement;
- (f) perform any other obligations expressly provided for in this Agreement to be performed by the Operating Committee and any other matters as the Parties may agree from time to time;
- (g) attempt to resolve any controversy, claim or dispute prior to referring such matters to the Executive Officers of MP and MH for resolution in accordance with Section 16.1 and the form of notices being provided by the Parties pursuant to the provisions of this Agreement; and
- (h) make and implement decisions concerning Section 19.1 and the form of notices being provided by the Parties pursuant to the provisions of this Agreement,

provided that the Operating Committee shall not have authority to modify the terms and conditions of this Agreement.

ARTICLE X

REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 General and US Bankruptcy Representations and Warranties

- (1) Each Party makes the following representations and warranties to the other Party, which representations and warranties will be deemed to be repeated, if

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applicable, by each Party throughout the Contract Term:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) subject to Article XII, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) subject to Article XII, the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered by it in accordance with this Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any equitable defences;
- (e) it is a Market Participant as of the date of the execution of this Agreement;
- (f) it or its Credit Support Provider, if any, is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it or its Credit Support Provider, if any, being or becoming bankrupt;
- (g) there is not pending or, to its knowledge, threatened against it or any of its Affiliates or its Credit Support Provider, if any, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing and understanding the merits, and understands and accepts, the terms, conditions and risks of this Agreement. It is also

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capable of assuming, and assumes, the risks of this Agreement. Information and explanations related to the terms and conditions of this Agreement will not be considered advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other Party will be deemed to be an assurance or guarantee as to the expected results of this Agreement, unless such communication is expressly stated in writing to be a “guarantee” and is signed by the Party providing the statement;

- (i) it has entered into this Agreement in connection with the conduct of its business and it has, subject to the provisions of this Agreement, the capacity or ability to make available or take delivery of (as applicable) all of the Firm Energy;
- (j) the other Party is not acting as a fiduciary for or an adviser to it in respect of this Agreement;
- (k) this Agreement constitutes a “master netting agreement” and all transactions pursuant to it constitute "forward contracts" within the meaning of the United States Bankruptcy Code ("**Bankruptcy Code**") or a “swap agreement” within the meaning of the Bankruptcy Code;
- (l) it is a “forward contract merchant” within the meaning of the Bankruptcy Code with respect to any transactions under this Agreement that constitute "forward contracts" and a “swap participant” with respect to any transactions under this Agreement that constitute “swap agreements”, all within the meaning of the Bankruptcy Code;
- (m) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code;
- (n) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code;
- (o) it is a “master netting agreement participant” within the meaning of the

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Bankruptcy Code;

- (p) certain provisions of this Agreement grant each Party the contractual right to "cause the liquidation, termination, or acceleration" of this Agreement or the transactions under this Agreement within the meaning of Sections 556, 560 and 561 of the Bankruptcy Code, as they may be amended, superseded or replaced from time to time;
- (q) it intends and agrees that, if it goes into bankruptcy, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbour provisions of the Bankruptcy Code set forth in, *inter alia*, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time;
- (r) it is an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12);
- (s) it (i) is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this Agreement, or the products or by products thereof; and (ii) enters into this Agreement solely for purposes related to its business as such;
- (t) (i) for the purposes of this Agreement, neither it nor the other Party is a "utility" as such term is used in 11 U.S.C. Section 366; and (ii) it waives and agrees not to assert against the other Party the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein it is a debtor and in any such proceeding, it further waives the right to assert that the other Party is a provider of last resort; and
- (u) the Parties acknowledge that all transactions executed under this Agreement, and this Agreement itself, are commercial merchandizing contracts that are not regulated under the Commodity Exchange Act, as amended, 7 U.S.C. Sec. 1, et seq. (the "**Act**") and lawful Commodity Futures Trading Commission ("**CFTC**") regulations promulgated

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thereunder (“**Regulations**”), as "swaps" as defined in Sec. 1a(47)(A) of the Act but rather all transactions under this Agreement and this Agreement itself are excluded from the term “swap” under Section 1a(47)(B)(ii) of the Act.

- (2) MH makes the following additional representations and warranties to MP as of the Effective Date, which representations and warranties will be deemed to be repeated throughout the Contract Term:
 - (a) no Event of Default with respect to MH and no MH Termination Event has occurred and is continuing; and
 - (b) no Event of Default with respect to MH and no MH Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.
- (3) MP makes the following additional representations and warranties to MH as of the Effective Date, which representations and warranties will be deemed to be repeated throughout the Contract Term:
 - (a) no Event of Default with respect to MP and no MP Termination Event has occurred and is continuing; and
 - (b) no Event of Default with respect to MP and no MP Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.

10.2 MH Tax Representations and Warranties

MH makes the following representations and warranties to MP, which representations and warranties will be deemed to be repeated, if applicable, by MH throughout the Contract Term:

- (a) it is a foreign person (as that term is used in section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States federal income tax purposes and its U.S. Taxpayer identification number is 98-0126210; and
- (b) no part of any payment received or to be received by MH in connection with this Agreement is attributable to a trade or business carried on by it in the

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United States of America.

10.3 MP Tax Representations

MP makes the following representations and warranties to MH, which representations and warranties will be deemed to be repeated, if applicable, by MP throughout the Contract Term:

- (a) it is a "U.S. person" (as that term is used in section 1.1441-4(a) (3) (ii) of the United States Treasury Regulations) for United States federal income tax purposes and its U.S. Taxpayer identification number is 39-0715160; and
- (b) no part of any payment received or to be received by MP in connection with this Agreement is attributable to a trade or business carried on by it or in respect of services rendered by it in Canada.

ARTICLE XI**CONFIDENTIALITY****11.1 Confidentiality**

The Parties confirm that Confidential Information (as defined in the "Non-Disclosure Agreement") had been disclosed by each Party to the other Party during the course of negotiating this Agreement and acknowledge that the provisions of the Non-Disclosure Agreement governs the disclosure of all such Confidential Information that was disclosed up to the date this Agreement is executed. The Parties (each a "**Discloser**") also recognize that there is a need pursuant to this Agreement for each Party to disclose Confidential Information, after the date this Agreement is executed, to the other Party (each a "**Recipient**") and that the provisions of this Agreement will govern the disclosure of such information not the Non-Disclosure Agreement and the Parties wish to protect the Confidential Information in the following manner and agree as follows:

- (a) "**Confidential Information**" shall mean all non-public and confidential information which information is treated by the Discloser and its representatives as confidential and which is conspicuously marked "Confidential" if in written or printed form, or if oral, which is

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specifically identified as confidential at the time of disclosure and is confirmed in writing to each other party as “Confidential” within five (5) Business Days after disclosure, unless: (i) the information is or becomes publicly known through lawful means; (ii) the information was rightfully in Recipient's possession or part of Recipient's general knowledge prior to the date of this Agreement; or (iii) the information is disclosed to Recipient without confidential restriction by a third party who rightfully possesses the information (without confidential restriction) and did not learn of it, directly or indirectly, from Recipient.

- (b) Except as hereinafter provided, Recipient shall hold all Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party. Recipient shall take all reasonable measures to protect the confidentiality of, and avoid the unauthorized use, disclosure, publication, or dissemination of Confidential Information. Recipient may disclose Confidential Information:
- (i) to its directors, officers, employees, members, agents or advisors, including, without limitation, its attorneys, accountants, consultants and financial advisors who need to know such information for the purposes of the transactions contemplated by this Agreement (each a “**Representative**”); and
 - (ii) to any other third parties, only with the prior written consent of the Discloser.
- (c) If the Recipient or its Representatives are required to disclose the Confidential Information by law, regulation, ruling of a governmental agency or by court order, before the Recipient or its Representatives disclose any Confidential Information, the Recipient or its Representatives shall give the Discloser timely written notice (at least 10 Business Days) of the requirement for disclosure and assist the

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Discloser to secure a protective order to limit disclosure of such Confidential Information only to parties agreeing to be bound by the terms of a confidentiality agreement in a form and content satisfactory to the Discloser, acting reasonably. Recipient shall cooperate reasonably in any such efforts to secure a protective order; provided, however, Recipient shall not be required to take, or refrain from taking, any action if it would cause Recipient or its Representatives to be in violation of the terms of a required disclosure described in this Section 11.1(c).

- (d) Notwithstanding the foregoing, the Parties acknowledge that if MP files this Agreement with the Minnesota Public Utilities Commission, MP agrees to seek protection of the Confidential Information in this Agreement under the Minnesota Public Utilities Commission's Minnesota Rule 7829.0500. The Parties will cooperate reasonably to prepare a public version of this Agreement for inclusion in the public record at the Minnesota Public Utilities Commission. The Parties agree that the public version of this Agreement will redact only such Confidential Information that properly constitutes proprietary information, trade secrets, or other privileged information as defined by applicable Minnesota laws.
- (e) Recipient shall be liable for any use or disclosure of Confidential Information by its Representatives, which is not in compliance with the obligations imposed upon the Recipient pursuant to this Agreement.
- (f) All rights, title and interest in and to the Confidential Information are reserved by, and remain the sole property of the Disclosing Party. The Recipient does not acquire any intellectual property rights under this Agreement. Nothing in this Agreement shall be construed as a grant of, or intention or commitment to grant any right, title or interest of any nature whatsoever in or to the Confidential Information.

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- (g) Recipient agrees that the unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to the Discloser, the amount of which may be difficult to ascertain or quantify, thus, making any remedy at law or in damages inadequate. Therefore, Recipient agrees that Discloser shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Section and for any other relief Discloser deems appropriate. This right shall be in addition to any other remedy available to Discloser in law or equity.
- (h) This Section 11.1 shall survive any termination of this Agreement for a period of three (3) years.

ARTICLE XII
CONDITIONS

12.1 MH's Conditions Precedent

- (1) The obligation of MH to complete the transactions referenced herein shall be subject to and contingent upon the fulfillment of the following conditions precedent (“**MH's Conditions Precedent**”) to the satisfaction of MH, as certified or waived in writing by MH, by the dates specified:
 - (a) MH obtaining the approval of its Board of Directors, within sixty (60) days of the Effective Date, approving MH entering into this Agreement;
 - (b) MH obtaining an Order in Council of the Lieutenant Governor (Manitoba), within one-hundred and fifty (150) days of the Effective Date, approving MH entering into this Agreement;
 - (c) MH obtaining the final non-appealable order of the NEB on conditions acceptable to MH, in its sole and absolute discretion, six (6) months before the start of the Contract Term, or by such other date (if any) as the Parties may mutually agree upon, authorizing the export by MH of the Firm Energy to the United States;

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- (d) the US FCA has been entered into by MISO, MP, and MH and/or an Affiliate of MH, and such other Persons, if any, as MISO may otherwise require enter into the US FCA, on or before June 1, 2016;
- (e) the Canadian FCA has been entered into by MH (Power Sales & Operations division) and MH's Transmission Provider on or before June 1, 2016;
- (f) the 500 kV US Transmission Interconnection is constructed, commissioned and in-service on or before June 1, 2025;
- (g) the 500 kV Canadian Transmission Interconnection is constructed, commissioned and in-service on or before June 1, 2025;
- (h) MH receiving from MH's Transmission Provider, on or before June 1, 2025, pursuant to MH's OATT, 133 MW of southbound Firm Transmission Service in respect of the 133 MW Canadian TSR as a result of the Canadian Upgrades being constructed and placed in-service;
- (i) MP receiving from MISO, on or before June 1, 2025, pursuant to the TARIFF, 133 MW of southbound Firm Transmission Service in respect of the US Upgrades as a result of the US Upgrades being constructed, and placed in-service; and
- (j) the Parties executing on the Effective Date the 2014 Energy Exchange Agreement.

12.2 MP's Conditions Precedent

- (1) The obligation of MP to complete the transactions referenced herein shall be subject to and contingent upon the fulfillment of the following conditions precedent ("**MP's Conditions Precedent**") to the satisfaction of MP, as certified or waived in writing by MP, by the dates specified:

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- (a) the US FCA has been entered into by MISO, MP, and MH and/or an Affiliate of MH, and such other Persons, if any, as MISO may otherwise require enter into the US FCA, on or before June 1, 2016;
- (b) the 500 kV US Transmission Interconnection is constructed, commissioned and in-service on or before June 1, 2025;
- (c) MP receiving from MISO, on or before June 1, 2025, pursuant to the TARIFF, 133 MW of southbound Firm Transmission Service in respect of the 133 MW US TSR as a result of the US Upgrades being constructed and place in-service;
- (d) the final approval of this Agreement by the MPUC on conditions acceptable to MP, within eighteen (18) months of the Effective Date; and
- (e) the Parties executing on the Effective Date the 2014 Energy Exchange Agreement.

12.3 Required Approvals

MH shall use Commercially Reasonable Efforts to secure the approvals listed in Sections 12.1(1)(c) and 12.1(1)(h) (“**MH’s Required Approval**”). MP shall use Commercially Reasonable Efforts to secure the approvals listed in Sections 12.2(1)(c) (“**MP’s Required Approval**”). Each Party agrees to cooperate with and provide reasonable assistance to the other Party, if requested, in order to assist that Party in obtaining the Required Approvals.

12.4 Conditions Precedent Notices

- (1) MH shall notify MP as soon as practicable following the satisfaction or waiver or the failure to satisfy or waive any of MH’s Conditions Precedent, including the obtaining of or the failure to obtain MH’s Required Approval.
- (2) MP shall notify MH as soon as practicable following the satisfaction or waiver or the failure to satisfy or waive any of MP’s Conditions Precedent including

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MP's Required Approvals.

12.5 Termination of Agreement

This Agreement shall, subject to the obligation of the Parties in Section 12.3 and Article XI, terminate on the date notice has been received by one Party from the other Party that:

- (a) any of MH's Conditions Precedent have not been satisfied and will not be waived; or
- (b) any of MP's Conditions Precedent have not been satisfied and will not be waived.

ARTICLE XIII**FORCE MAJEURE****13.1 Force Majeure**

- (1) Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure event or circumstance, provided that:
 - (a) the non-performing Party shall give the other Party notice promptly (and within forty-eight (48) hours if possible) after the non-performing Party's knowledge of the commencement of the Force Majeure, with written confirmation to be supplied within ten (10) calendar days after the commencement of the Force Majeure further describing the particulars of the occurrence of the Force Majeure;
 - (b) the delay in performance due to the Force Majeure shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure;
 - (c) the Party whose performance is delayed or prevented: (i) shall proceed with Commercially Reasonable Efforts to overcome the Force Majeure which is preventing or delaying performance; and (ii) shall provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be

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- taken to remedy the consequences of the Force Majeure, the schedule for such actions and the expected date by which performance shall no longer be affected by the Force Majeure; and
- (d) when the performance of the Party claiming the Force Majeure is no longer being delayed or prevented, that Party shall give the other Party notice to that effect.
- (2) For greater certainty, the Parties further acknowledge that the following events or circumstances shall not constitute or form the basis for Force Majeure: (a) the loss of MP's markets; (b) MP's inability to economically use or resell the Firm Energy, including MP's ability to purchase the Firm Energy, at a price less than the prices provided for in this Agreement; and (c) MH's ability to sell the Firm Energy at a price greater than the prices provided for in this Agreement.

ARTICLE XIV**CREDITWORTHINESS****14.1 Credit Review Procedures**

For the purpose of determining whether a Party is able to meet its obligations pursuant to this Agreement, a Party may require commercially reasonable credit review procedures. If requested by a Party, the other Party shall deliver, unless such financial statements are available on "EDGAR" or "SEDAR" or on such other Party's internet website: (a) within 150 calendar days following the end of each fiscal year, a copy of such Party's annual report containing audited consolidated financial statements for such fiscal year; and (b) within 90 calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or such other principles then in effect, provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such Party shall diligently pursue the

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preparation, certification and delivery of the statements.

14.2 Performance Assurances

- (1) Should the creditworthiness, financial strength, or performance viability of a Party (the “**Second Party**”) become unsatisfactory to the other Party (the “**Requesting Party**”) in such Requesting Party’s commercially reasonably exercised discretion with regard to any transaction pursuant to this Agreement, the Requesting Party may require the Second Party to post or provide at the Second Party’s option: (a) a Letter of Credit; (b) other collateral or security by the Second Party that is acceptable to the Requesting Party in its commercially reasonably exercised discretion; (c) a Guarantee Agreement; or (d) some other mutually agreeable method of satisfying the Requesting Party (the items described in (a) through (d) are referred to as “**Performance Assurance**”). The Requesting Party may only request, and the Second Party shall only be required to provide, Performance Assurance in a commercially reasonable amount under the circumstances. The Second Party may request from the Requesting Party that the Performance Assurance be returned or reduced, on the condition that such a request shall only be made once every sixty (60) days during any period when a Performance Assurance has been provided. The Requesting Party shall be required to return or reduce the Performance Assurance, after receipt of the request from the Second Party, if, considering whether the factors that justified the Requesting Party’s request for Performance Assurance have been removed or improved, it is commercially reasonable to do so.
- (2) Events which may cause the Requesting Party to question the Second Party’s financial strength, or performance viability as set out in Section 14.2(1) above, include, but are not limited to, any of the following:
 - (a) The Requesting Party having knowledge that the Second Party (or its Credit Support Provider, if applicable) is failing to perform or defaulting under terms of other contracts;
 - (b) The Second Party, or its Credit Support Provider has an Investment

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- Grade Credit Rating (unenhanced by unaffiliated third Party support) and the credit rating falls below an Investment Grade Credit Rating according to at least one of S&P, Moody's or DBRS;
- (c) The Second Party, or its Credit Support Provider is rated BBB- by S&P (or the equivalent rating from Moody's or DBRS) and the Second Party or its Credit Support Provider (as applicable) has been either placed on negative credit watch or negative outlook by at least one such rating agency; or
 - (d) Other material adverse changes in the Second Party's financial condition.
- (3) If the Second Party fails to provide Performance Assurance within five (5) Business Days of written demand therefore, such failure will be considered an Event of Default under Article XVII of this Agreement and the Requesting Party shall have the right to exercise any of the remedies provided for under that Article XVII. Nothing contained in this Article XIV shall affect any other credit agreement or arrangement, if any, between the Parties.
- (4) If the Second Party provides a Letter of Credit, the Second Party shall: (i) renew the Letter of Credit on a timely basis; and (ii) provide a substitute Letter of Credit at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit if the issuer has indicated its intent not to renew such Letter of Credit.

14.3 Grant of Security Interest

- (1) To secure its obligations under this Agreement and to the extent either or both Parties (or their Credit Support Provider, if applicable) deliver Performance Assurance hereunder, unless prohibited by applicable law, each Party (a "**Pledgor**") hereby grants to the other Party (the "**Secured Party**") a present and continuing security interest in, and lien on (and right of setoff against), all Performance Assurance delivered by the Pledgor to the Secured Party hereunder and held for the benefit of, such Secured Party, and all proceeds of such Performance Assurance (subject to any secured interest held or

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maintained by the Pledgor's lender), and Pledgor agrees to take such actions as the Secured Party reasonably requires in order to perfect the Secured Party's security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting there from or from the liquidation thereof.

- (2) Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, or an uncured event of default under any of the MH/MP Agreements, the Non-defaulting Party may do any one or more of the following: (a) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance delivered by the Defaulting Party, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all Performance Assurance of the Defaulting Party in the possession of the Non-defaulting Party or its agent up to the amount then owed to it by the Defaulting Party; (c) draw on any outstanding Letter of Credit issued for its benefit up to the amount then owed to it by the Defaulting Party; and (d) liquidate all Performance Assurance then held by or for the benefit of the Secured Party, free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
- (3) In addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) under applicable law, the Non-defaulting Party may, at its option and in its commercially reasonable discretion and without prior notice to the Defaulting Party, setoff any amounts payable by it to the Defaulting Party under this Agreement (irrespective of currency, place of payment or booking office of

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obligation) against amounts that the Defaulting Party may owe it under this Agreement and any of the MH/MP Agreements. The obligations of the Parties under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff.

- (4) The payment by the Defaulting Party of any amounts due under this Agreement and under any of the MH/MP Agreements shall be a condition precedent to the payment of any amounts due by the Non-defaulting Party to the Defaulting Party under any of the MH/MP Agreements.
- (5) The Non-defaulting Party shall use Commercially Reasonable Efforts to provide notice to the Defaulting Party as to the nature and amount of any setoff and recoupment after it is effected, but failure to give notice shall not impair the validity of any setoff.

ARTICLE XV

[TRADE SECRET DATA EXCISED]

15.1 [TRADE SECRET DATA EXCISED]

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ARTICLE XVI**DISPUTE RESOLUTION****16.1 Condition Precedent to Arbitration**

Prior to initiation of arbitration, any controversy, claim or dispute between the Parties shall be first referred in writing to the Operating Committee for review and attempted resolution. If the controversy, claim or dispute is not resolved within thirty (30) calendar days after referral to the Operating Committee, the matter will be referred to the Executive Officers for review and decision. Any decision by the Executive Officers to resolve a controversy, claim or dispute must be unanimous. If the

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controversy, claim or dispute is not resolved within thirty (30) calendar days after referral to the Executive Officers, either Party may proceed to arbitration.

16.2 Initiation

Arbitration proceedings must be initiated within one hundred and twenty (120) calendar days of the date the controversy, claim or dispute was first referred to the Executive Officers and shall be initiated by written notice to the other Party setting forth the point or points in dispute. Unless otherwise agreed to in writing by the Parties, failure to initiate arbitration within such one hundred and twenty (120) day period shall be deemed a waiver of the right to arbitrate that controversy, claim or dispute. Provided however, that any such waiver shall not preclude a Party from initiating arbitration proceedings in respect of a similar claim, controversy or dispute based on facts that arise subsequent to the date the controversy, claim or dispute was first submitted to the Executive Officers.

16.3 Arbitration Proceedings

Subject to Section 16.1 above and Section 9.1(3)(g), any and all controversies, claims or disputes between the Parties arising out of or relating to this Agreement or an alleged breach thereof, shall be settled by arbitration. For greater clarity and certainty, arbitration shall not be available to anyone who is not a party to this Agreement, and the aforesaid requirement to arbitrate shall not preclude a Party from seeking contribution, indemnification or damages from another Person in proceedings instituted by third parties in courts of competent jurisdiction. Unless otherwise provided in this Article, the arbitration shall be conducted before three arbitrators and shall be conducted in accordance with the International Commercial Arbitration Act (Ontario), RSO 1990, c.I9 and the UNCITRAL model Law on International Commercial Arbitration as amended and then in effect. Each Party shall select one arbitrator, and the two selected arbitrators shall jointly agree, within 30 days after the last of the two arbitrators have been appointed, on a third arbitrator who shall chair the arbitration. All arbitrators shall be competent by virtue of education and experience in the particular matter subject to arbitration. Before proceeding with the first hearing,

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each arbitrator shall take an oath of office. The arbitrators shall require witnesses to testify under oath administered by a duly qualified person. The arbitrators shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this Agreement insofar as shall be necessary to determine the particular matter subject to arbitration. The arbitrators shall not have jurisdiction or authority to add to, detract from, or alter the provisions of this Agreement or any applicable law or rule of civil procedure. The arbitrators shall have the power to order specific performance under any and all provisions of this Agreement and no Party can avoid specific performance based on an argument that the other Party has an adequate remedy at law. All arbitrations shall be held in Winnipeg, Manitoba.

16.4 Jurisdiction

The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of this Agreement. For that purpose, this Article shall be treated as an agreement independent of the terms of the balance of this Agreement. A decision by the arbitrators that this Agreement is null and void shall not entail *ipso jure* the invalidity of this Article. If a Party disputes the authority or jurisdiction of the arbitrators, it shall notify the other Party as soon as the matter alleged to be beyond the authority or jurisdiction of the arbitrators is raised during the arbitration proceedings. The arbitrators may rule on the issue as to whether or not they have the authority or jurisdiction in dispute, either as a preliminary question or in an award on the merits.

16.5 Discovery

Each Party shall have the rights of discovery in accordance with the applicable rules of the Court of Queen's Bench of Manitoba. All issues subject to discovery shall be determined by order of the arbitrators upon motion made to them by any Party. When a Party is asked to reveal material which the Party considers to be proprietary or confidential information or trade secrets, the Party shall bring the matter to the attention of the arbitrators who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

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16.6 Continuation of Performance

Pending the final decision of the arbitrators, the Parties agree, subject to Section 14.2, to diligently proceed with the performance of all obligations, including the payment of all sums required by this Agreement. Payment of any interest shall be as determined by the arbitrator.

16.7 Costs

All fees, costs and expenses of the arbitrators incurred in connection with the arbitration shall be allocated among the Parties by the arbitrators. The nature of the dispute and the outcome of the arbitration shall be factors considered by the arbitrators when allocating such fees, costs, and expenses. Each Party shall be responsible for the fees, costs, and expenses of its own employees, expert consultants and attorneys, and for the costs of exhibits and other incidental costs.

16.8 Enforcement

Any decision (including orders arising out of disputes as to the scope or appropriateness of a request for, or a response to, discovery) of an arbitrator may be enforced in a court of competent jurisdiction with all costs, including court costs and attorney's fees and disbursements, paid by the Party found to be in default or in error. Judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction and may be enforced in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

16.9 Correction and Interpretation of Award

Within thirty (30) calendar days after receipt of an arbitration award, a Party, with notice to the other Party, may request the arbitrators to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature, or may request the arbitrators to give an interpretation of a specific point or a part of the award. If the arbitrators consider the request to be justified, they shall make the correction or give the interpretation within thirty (30) calendar days after receipt of the request. The interpretation shall form part of the award. The arbitrators may correct

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any error as herein-before referred to on their own initiative within thirty (30) calendar days after the date of award. In addition, within thirty (30) calendar days after receipt of an award, a Party with notice to the other Party may request the arbitrators to make an additional award as to claims presented in the arbitration but omitted from the award. If the arbitrators consider the request to be justified, they shall make an additional award within sixty (60) calendar days after receipt of the request. The arbitrators may extend, at their sole discretion if necessary, the period of time within which it shall make a correction, interpretation or an additional award.

ARTICLE XVII**DEFAULT/TERMINATION****17.1 Events of Default**

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

- (a) the failure of either Party or any Credit Support Provider of either Party to make any payment to the other Party as required by this Agreement if such amount remains unpaid for a period of five (5) Business Days after the date the Defaulting Party receives written notice from the Non-defaulting Party that the amount is overdue;
- (b) the failure by either Party to perform or observe any material obligation to the other Party under this Agreement, that is not excused by an event of Force Majeure, other than obligations for the payment of money, if such failure is not remedied within thirty (30) calendar days after written notice thereof shall have been given by the Non-defaulting Party to the Defaulting Party;
- (c) the insolvency or bankruptcy of a Party or its Credit Support Provider or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors;

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- (d) the application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of thirty (30) calendar days;
- (e) the authorization or filing by a Party or its Credit Support Provider of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party or its Credit Support Provider without such authorization, application or consent, which proceedings remain undismissed or unstayed for thirty (30) calendar days or which result in adjudication of bankruptcy or insolvency within such time;
- (f) in the event that a Party fails to provide Performance Assurance within five (5) Business Days of the date the Performance Assurance was to have been provided in accordance with Section 14.2;
- (g) a Party or its Credit Support Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to or reorganizes or reincorporates or reconstitutes into or as another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity fails to assume, if applicable, all the obligations of such Party or such Party's Credit Support Provider under this Agreement to which it or its predecessor was a party and, in the case of a Credit Support Provider, such Party has failed to provide a replacement Guarantee Agreement (if a Guarantee

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Agreement is outstanding) within five (5) Business Days

- (h) the occurrence of a Letter of Credit Default that remains uncured for five (5) Business Days;
- (i) the occurrence of an uncured Event of Default (as such term is defined in Section 17.1 of the 250 MW System Power Sale Agreement) provided that the Non-defaulting Party shall have the unfettered discretion whether to declare an Event of Default under this Agreement associated with such occurrence;
- (j) the occurrence of an uncured Event of Default (as such term is defined in Section 15.1 of the Energy Exchange Agreement) provided that the Non-defaulting Party shall have the unfettered discretion whether to declare an Event of Default under this Agreement associated with such occurrence;
- (k) the occurrence of an uncured Event of Default (as such term is defined in Section 15.1 of the 2014 Energy Exchange Agreement) provided that the Non-defaulting Party shall have the unfettered discretion whether to declare an Event of Default under this Agreement associated with such occurrence; or
- (l) any material representation or warranty made by the Defaulting Party in this Agreement that is proven to have been false in any material respect when made,

then, and in any such event, the Non-defaulting Party shall have all the rights and remedies available to it at law or in equity, including the right to terminate this Agreement by written notice to the Defaulting Party in accordance with Section 17.3.

17.2 Suspension of Performance

Notwithstanding any other provision of this Agreement, if an Event of Default has occurred and is continuing beyond any applicable cure period, the Non-defaulting Party, upon notice to the Defaulting Party, shall have the right: (a) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than (10) Business Days unless an Early Termination

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Date has been declared and notice thereof given pursuant to Section 17.3; and (b) to the extent an Event of Default has occurred and is continuing beyond any applicable cure period, to exercise any remedies available at law or in equity.

17.3 Right to Terminate Following an Event of Default

- (1) If at any time an Event of Default with respect to a Party (the "**Defaulting Party**") has occurred and is then continuing beyond any applicable cure period, the other Party (the "**Non-defaulting Party**") may, by not less than twenty (20) calendar days notice to the Defaulting Party specifying the relevant Event of Default, designate a Business Day not earlier than the day such notice is effective as termination of this Agreement prior to the expiry of the Contract Term (such designated Business Day will constitute an "**Early Termination Date**").
- (2) In addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) available to the Non-defaulting Party at law or in equity, the Non-defaulting Party may, at its option and in its commercially reasonably exercised discretion and without prior notice to the Defaulting Party, setoff any amounts payable by it to the Defaulting Party under this Agreement (irrespective of currency, place of payment or booking office of obligation) against amounts that the Defaulting Party may owe it under any of the MH/MP Agreements. The obligations of the Parties under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff and recoupment.
- (3) The payment by the Defaulting Party of any amounts due under any of the MH/MP Agreements shall be a condition precedent to the payment of any amounts due by the Non-defaulting Party to the Defaulting Party under any of the MH/MP Agreements.
- (4) The Non-defaulting Party shall use Commercially Reasonable Efforts to provide notice to the Defaulting Party as to the nature and amount of any setoff and recoupment after it is affected, but failure to give notice shall not impair the validity of any setoff and recoupment.

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17.4 MH Termination Events

MH has the right, but not the obligation, to terminate this Agreement (a “**MH Termination Event**”) immediately upon notice to MP upon the termination of any of the MH/MP Agreements prior to the expiry of the term of the applicable agreement, unless the termination occurred due to occurrence of an uncured “Event of Default” (as such term is defined in the applicable agreement) by MH.

17.5 MP Termination Events

MP has the right, but not the obligation, to terminate this Agreement (a “**MP Termination Event**”) immediately upon notice to MH upon the termination of any of the MH/MP Agreements prior to the expiry of the term of the applicable agreement, unless the termination occurred due to occurrence of an uncured “Event of Default” (as such term is defined in the applicable agreement) by MP.

17.6 Payment on Termination

On or as soon as practicable following the effective designation of either an MH Termination Event or an MP Termination Event, MH shall calculate the amounts due and owing by MP to MH, and MP shall calculate the amounts due and owing by MH to MP, as applicable, for the period up to and including the termination date, and each Party shall deliver an invoice to the other Party for the amount due which shall be payable in accordance with Article V.

ARTICLE XVIII

LIMITATION OF LIABILITY

18.1 Limitation of Liability

THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY

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THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS ALL RIGHTS OR REMEDIES AVAILABLE TO A PARTY AT LAW OR IN EQUITY, SUCH PARTY SHALL BE ENTITLED TO SEEK ALL OR ANY SUCH RIGHTS AND DAMAGES OR REMEDIES. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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ARTICLE XIX**GENERAL****19.1 Notices**

Any notices, demands or requests (other than those operational matters identified by the Operating Committee), required or authorized by this Agreement shall be in writing and may be delivered by hand delivery, mail, electronic mail, confirmed fax, or overnight courier service to:

if to the Manitoba Hydro-Electric Board:

Division Manager
Power Sales & Operations
Manitoba Hydro
360 Portage Avenue
Post Office Box 815
Winnipeg, Manitoba
R3C 2P4
Fax (204) 360-6137

with copies to:

General Counsel
Manitoba Hydro
360 Portage Avenue
Post Office Box 815
Winnipeg, Manitoba
R3C 2P4
Fax (204) 360-6147

if to Minnesota Power:

Vice-President Strategy & Planning
Minnesota Power

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30 West Superior St.
Duluth, MN 55802
Fax (218) 723-3915

with copies to:

General Counsel
Minnesota Power
30 West Superior Street
Duluth, MN 55802
Fax (218) 723-3955

Notice by hand delivery shall be effective at the close of business on the day actually received, if received during the recipient's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight mail, or courier, shall be effective on the next Business Day after it was sent. Notice by electronic mail or confirmed fax shall be effective at the close of business on the day actually received, if received during the recipient's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. The designation of the persons to be notified or the address of such persons may be changed at any time by similar notice.

19.2 Operational Matters

All issues related to operational matters and notices in respect thereto, as identified by the Operating Committee shall be directed to the appropriate operations personnel at MH and MP. Each Party shall each provide to the other Party a list of contacts for notification on the said operational matters that shall be updated from time to time as required.

19.3 MH's Marketing and Sales Function and MP's Merchant Function

The Parties acknowledge that MH has established an open access transmission tariff and MP is subject to the TARIFF, and MH has adopted, and MP is subject to, the FERC "Standards of Conduct" which require that MH's and MP's respective

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employees engaged in transmission system operations function independently from MH's and MP's respective marketing and sales employees, and that MH and MP treat all of their respective transmission customers on a non-discriminatory basis. This Agreement is entered into by MH and MP on behalf of their respective marketing and sales functions. Nothing in this Agreement shall obligate either MH's or MP's transmissions function to take or refrain from taking any action.

19.4 Records

Each Party shall keep complete and accurate records and memoranda of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item required hereunder. With respect to invoicing records, each Party shall maintain such records, memoranda and data for the current calendar year plus a minimum of five (5) previous calendar years. Each Party or its respective designee, shall each have the right, at its sole expense, upon reasonable prior notice during the other Party's regular business hours at such Party's primary place of business, to inspect, review and take copies of the other Party's records as far as such records concern monetary matters or other issues under this Agreement and may be reasonably necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of cost, bills or invoices relating to transactions hereunder. Each Party shall treat and shall take reasonable steps to cause its designee to treat such information so inspected, reviewed, or copied as Confidential Information.

19.5 Indemnity

- (1) Each Party shall indemnify and save harmless the other Party from and against all claims, actions, suits, proceedings, demands, assessments, judgments, charges, penalties, costs, and expenses which arise or are made or claimed against or suffered or incurred by the other as a result of:
 - (a) any breach by it of or any inaccuracy of any representation or warranty contained in this Agreement or in any agreement, instrument, certificate or other document delivered pursuant hereto; and
 - (b) any breach or non-performance by it of any covenant to be performed

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by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto.

- (2) The Parties agree:
- (a) MH shall be deemed to be in exclusive control of the Firm Energy prior to the delivery by MH and receipt by MP of the Firm Energy at the Delivery Point and MH shall be responsible for, and shall indemnify MP from, any damages or injury MP or any third party may suffer or incur, caused thereby except to the extent such damages or injury were caused by the gross negligence or wilful misconduct of MP; and
 - (b) MP shall be deemed to be in exclusive control of the Firm Energy from and after delivery by MH and receipt by MP of the Firm Energy at the Delivery Point and shall be responsible for, and shall indemnify MH from, any damages or injury MH or any third party may suffer or incur, caused thereby except to the extent such damages or injury is caused by the gross negligence or wilful misconduct of MH.

For the purposes of this Section 19.5(2) “gross negligence or wilful misconduct” does not include acts or omissions by a Party that constitute ordinary negligence, and “damages or injury” does not include indirect, incidental, and consequential damages, and without restricting generality of the foregoing, “damages or injury” does not include expenses or liabilities associated with the interruption of power, energy or related services to any third Person.

- (3) Each Party shall promptly notify the other Party of claims, demands or actions that may result in a claim for indemnity. Failure to be provided with notice will not relieve a Party from indemnification liability unless, and then only to the extent that, such failure results in the forfeiture by such Party of a substantial right or defense. No settlement of any claim which may result in a claim for indemnity may be made by either Party without the prior consent of the other Party, which consent may not be unreasonably withheld. Neither

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Party shall be liable under this Agreement in respect of any settlement of a claim unless it has consented in writing to such settlement.

19.6 Governing Law

In respect of matters under this Agreement relating to or arising out of the offering and all other matters in respect of the Firm Energy, the Parties acknowledge that those matters and the applicable provisions of this Agreement concerning same shall be governed and construed in accordance with the laws of the province of Manitoba and Canada. Any disputes arising under this Agreement concerning same that are not resolved by arbitration shall be subject to the exclusive jurisdiction of the courts of the province of Manitoba and the Supreme Court of Canada.

19.7 Waiver of Right to Trial by Jury

Each Party hereby irrevocably waives to the fullest extent permitted by applicable law, any and all rights it may have to trial by jury with respect to any legal proceeding arising out of or relating to this Agreement and any agreement executed or contemplated to be executed in conjunction with this Agreement. This provision is a material inducement to each of the Parties for entering into this Agreement. Each Party hereby waives any right to consolidate any action, proceeding, or counterclaim arising out of or in connection with this Agreement and any other agreement executed or contemplated to be executed in conjunction with this Agreement, or any matter arising hereunder or thereunder in which a jury trial has not or cannot be waived.

19.8 Foreign Sovereign Immunities Act

MH irrevocably agrees to waive the protections of the Foreign Sovereign Immunities Act, 28 U.S.C. §1602, et seq., in connection with this Agreement.

19.9 No Representation or Warranty for Injury

It is acknowledged and agreed that the Firm Energy and related services are inherently dangerous, MH offers no warranty, or representation, express or implied, that the Firm's Energy or related services will not cause injury to Person, property or business.

19.10 Surviving Termination

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All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement, including, the provisions relating to: (a) the billing by MH to MP of and payment from MP to MH for or related to the Firm Energy; (b) the confidentiality provisions pursuant to Article 11 of this Agreement; and (c) Section 17.6, shall survive the Contract Term or the earlier termination of this Agreement, as the case may be, for a period of three (3) years following the expiration of the Contract Term or the earlier termination of this Agreement.

19.11 Enurement

This Agreement shall be binding upon and its benefits enure to the Parties and their permitted successors and assigns. This Agreement shall not create the relationship between the Parties of a joint venture or a partnership.

19.12 Assignment

Neither this Agreement nor any interest or obligation in or under this Agreement may be assigned (whether by way of security or otherwise) by either Party without the prior written consent of the other Party, except that either Party may, without consent of the other Party, assign this Agreement (in whole and not in part only) to any of their respective Affiliates, including any newly formed Affiliate pursuant to either Party reorganizing its corporate structure, on sixty (60) calendar days advance notice to the other Party provided that:

- (a) prior to the effective date of the assignment, Performance Assurance, if required by the non-assigning Party, has been provided to the non-assigning Party in an amount and upon terms satisfactory to the non-assigning Party, in its sole discretion, acting reasonably;
- (b) the non-assigning Party shall not be required to pay to the assignee an amount in respect of any Governmental Charges which the non-assigning Party would not have been required to pay to the assigning Party in the absence of such assignment;
- (c) the non-assigning Party shall not receive a payment from which an amount has been withheld or deducted, on account of a withholding tax

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in excess of that which the assigning Party would have been required to so withhold or deduct in the absence of such assignment;

- (d) it does not become unlawful for either Party or the assignee to perform any obligation under this Agreement as a result of such assignment; and
- (e) no Event of Default or MH Termination Event or MP Termination Event, as applicable, occurs as a result of such assignment.

With respect to the results described in clauses (b) and (c) above, the non-assigning Party will cause the assignee to make, and the assigning Party will make, such reasonable representations as may be mutually agreed upon by the assigning Party, the assignee and the non-assigning Party in order to permit such parties to determine that such results will not occur upon or after the assignment. For greater certainty the assignment in part only of the interest or obligation of MP, to an Affiliate of MP in accordance with and pursuant to the conditions stipulated in this Section 19.12, includes the interest granted pursuant to Article 8 to have the Allocated Environmental Attributes transferred to MP.

19.13 Waiver and Amendment

Unless otherwise specifically provided herein, this Agreement may be altered, modified, varied, or waived, in whole or in part, only by a supplementary written document executed by the Parties.

19.14 Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19.15 Recording of Communications

The Parties agree: (a) that each may electronically monitor or record, at any time and from time to time, any and all communications between them; (b) to waive any further notice of such monitoring or recording; (c) to notify and obtain any necessary consents of its officers and employees of such monitoring or recording; (d) that any such monitoring or recording may be offered into evidence in any such suit, trial,

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hearing, arbitration, or other proceeding; and (e) to furnish appropriately redacted copies of recordings to the other Party within ten (10) Business Days of the other Party's written request.

19.16 Existing Agreements

Each of the Parties are parties to existing agreements with each other and with other third parties. This Agreement shall not affect the obligations and rights of a Party with respect to such existing agreements, except as expressly provided for herein.

19.17 No Other Rights

This Agreement is not intended to and shall not create rights of any character whatsoever in favour of any Person, other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor shall any provision of this Agreement give any third Persons any right of subrogation or action over against any Party.

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19.18 Entire Agreement

Subject only to the provisions of the Non-Disclosure Agreement, this Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written proposals and communications pertaining hereto, including the Term Sheet. There are no representations, conditions, warranties or agreements, express or implied, statutory or otherwise, with respect to or collateral to this Agreement other than contained herein or expressly incorporated herein.

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

THE MANITOBA HYDRO-ELECTRIC
BOARD

By: A.D. Cormie, Division Manager Power
Sales & Operations

I HAVE AUTHORITY TO BIND THE
MANITOBA HYDRO-ELECTRIC BOARD

MINNESOTA POWER, an operating division of
ALLETE, Inc.

By: Alan R. Hodnik, Chairman, President and
Chief Executive Officer

I HAVE AUTHORITY TO BIND ALLETE,

PUBLIC DOCUMENT

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INC.

PUBLIC DOCUMENT
TRADE SECRET DATA EXCISED

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Appendix A
[Trade Secret Data Excised]

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Appendix B
MH's Energy Resources

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APPENDIX C
INTERBANK TRANSFER OF FUNDS ACCOUNT DESIGNATIONS

For THE MANITOBA HYDRO-ELECTRIC BOARD:

US Dollar Wire Payments

[TRADE SECRET DATA EXCISED]

For MINNESOTA POWER

US Dollar Payments

[TRADE SECRET DATA EXCISED]

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Appendix D
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APPENDIX E
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APPENDIX F
[TRADE SECRET DATA EXCISED]

APPENDIX G
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PUBLIC DOCUMENT
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APPENDIX H
[TRADE SECRET DATA EXCISED]

APPENDIX I
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TRADE SECRET & CONFIDENTIAL

APPENDIX J
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APPENDIX K
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APPENDIX L
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APPENDIX M
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TRADE SECRET AND CONFIDENTIAL

APPENDIX N
[TRADE SECRET DATA EXCISED]