

APPENDIX 10

PUBLIC DOCUMENT

TRADE SECRET & CONFIDENTIAL

TRADE SECRET DATA EXCISED

2014 ENERGY EXCHANGE AGREEMENT

between

THE MANITOBA HYDRO-ELECTRIC BOARD

- and -

MINNESOTA POWER, an operating division of ALLETE, Inc.

DATED July 30, 2014

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2014 ENERGY EXCHANGE 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 and transmission facilities in the United States of America and in Canada, respectively, and are engaged in the generation, transmission, 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: (i) the sale by MP and the purchase by MH of MP's Energy; (ii) MH agreeing to pay for MP's Pumped Energy; and (iii) MP agreeing to pay for MH's Stored Energy;

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AND WHEREAS, MH agrees to purchase and MP agrees to sell MP's Energy pursuant to the terms and conditions set forth in this Agreement;

AND WHEREAS, MH agrees to pay MP for MP's Pumped Energy pursuant to the terms and conditions set forth in this Agreement;

AND WHEREAS, MP agrees to pay MH for MH's Stored Energy 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:

"133 MW Energy Sale Agreement" shall mean the 133 MW Energy Sale Agreement entered into between MP and MH concurrently with this Agreement.

"250 MW System Power Sale Agreement" shall mean the 250 MW System Power

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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).

“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).

“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 2014 Energy Exchange Agreement and all amendments thereto.

“Ancillary Services” shall have the meaning set forth in the TARIFF.

“Balancing Authority” shall have the meaning set forth in the TARIFF.

“Bankruptcy Code” shall have the meaning set forth in Section 9.1(1)(k).

“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).

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“**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).

“**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.

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

“**Confidential Information**” shall have the meaning set forth in Section 10.1(a).

“**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, whether or not within the Contract Term.

“**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 MP is to make available MP’s Energy to MH.

“**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.

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“Day-Ahead Offer Basis” shall mean in advance, not later than 11 a.m. (EST) of the Business Day prior to any day that MP offers MP’s Pumped Energy to MH or MH offers MH’s Stored Energy to MP, as applicable.

“DBRS” shall mean DBRS Limited or its successor.

“Defaulting Party” shall have the meaning set forth in Section 15.3(1).

“Delivery Point” shall have the meaning set forth in Section 2.2(1).

“Discloser” shall have the meaning set forth in Section 10.1.

“Early Termination Date” shall have the meaning set forth in Section 15.3(1).

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

“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.

“Event of Default” shall have the meaning set forth in Section 15.1.

“Executive Officers” shall be, in the case of MH the Vice-President Generation Operations, and in the case of MP the Vice-President 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.

“Financial Schedule” shall have the meaning set forth in the TARIFF.

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

“**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 that, by the exercise of Good Hydro Utility Practice, if the Claiming Party is MH is 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 or environmental constraints lawfully imposed by such Governmental Authority) but only if, and to the extent that, such action or inaction by such Governmental Authority prevents or delays 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 to the extent that any of the foregoing prevents or delays the performance of a Claiming Party’s obligations hereunder.

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“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, commission or board of any of the foregoing, or any political subdivision thereof, or any court, or, without limitation, any other laws, 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, consumption, excise and other taxes (other than taxes based on income or net worth), charges, emission

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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 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 13.2 in a form acceptable to the Requesting Party acting with commercially reasonable discretion.

“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%); or (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: (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 and, 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

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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 to 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 15.1(c), (d),(e) or (g) of this Agreement shall occur with respect to the issuer of such Letter of Credit; or (e) twenty (20) Business Days prior to the expiration or termination date of a Letter of Credit, such Letter of Credit is not extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced.

“Local Balancing Authority” shall have the meaning set forth in the TARIFF.

“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 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).

“MH Termination Event” shall have the meaning set forth in Section 15.4.

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“**MH/MP Agreements**” shall mean this Agreement, the 250 MW System Power Sale Agreement, the Energy Exchange Agreement and the 133 MW Energy Sale Agreement.

“**MH’s Ancillary Services**” shall mean those Ancillary Services and other reasonably similar services and products, associated, directly or indirectly, with the transmission of MP’s Energy.

“**MH’s Conditions Precedent**” shall have the meaning set forth in Section 11.1.

“**MH’s Stored Energy**” shall have the meaning set forth in Section 2.5(2).

“**MH’s Stored Energy Price**” shall have the meaning set forth in Section 4.1(3).

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“**Minimum MP’s Energy Requested Amount**” shall have the meaning set forth in Section 2.1(2).

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

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

“**MP Charges**” shall have the meaning set forth in Section 3.1(5)(b).

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“**MP Termination Event**” shall have the meaning set forth in Section 15.5.

“**MP’s Ancillary Services**” shall mean those Ancillary Services and other reasonably similar services and products, associated, directly or indirectly, with the generation of MP’s Energy.

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“**MP’s Condition Precedent**” shall have the meaning set forth in Section 11.2.

“**MP’s Designated Peak Hours**” shall mean any four (4) hours in any day during the Contract Term, of which MP has provided advance notice to MH, not later than 8 a.m. (EST) of the Business Day occurring immediately prior to the day that MP’s Energy is to be made available by MP to MH.

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

“**MP’s Energy Price**” shall have the meaning set forth in Section 4.1(1).

“**MP’s Load Zone**” shall mean the geographic area that encompasses the major portion of MP’s electric load in the States of Minnesota and Wisconsin.

“**MP’s Pumped Energy**” shall have the meaning set forth in Section 2.5(1).

“**MP’s Pumped Energy Price**” shall have the meaning set forth in Section 4.1(2).

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

“**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 15.3(1).

“**Non-Disclosure Agreement**” shall mean that certain non-disclosure agreement between the Parties, effective November 10, 2006, as amended.

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

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

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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 nondiscrimination requirements; and (b) in the case of MH, provides reciprocal open access transmission service on sufficiently comparable and nondiscriminatory 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 nondiscrimination requirements, or provides reciprocal open access transmission service so as to entitle such entity to transmit electricity with entities whose transmission tariffs have been filed with and accepted by FERC as a transmission tariff.

“**Operating Committee**” shall have the meaning set forth in Section 8.1(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 13.2(1).

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

“**Pledgor**” shall have the meaning set forth in Section 13.3(1).

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“**Recipient**” shall have the meaning set forth in Section 10.1.

“**Representative**” shall have the meaning set forth in Section 10.1(b)(i).

“**Requesting Party**” shall have the meaning set forth in Section 13.2(1).

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

“**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 MP’s Energy to be delivered on any given day or days during the Contract Term.

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

“**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.

“**SEP Contract Year**” shall have the meaning set forth in Section 4.1(3).

“**Second Party**” shall have the meaning set forth in Section 13.2(1).

“**Secured Party**” shall have the meaning set forth in Section 13.3(1).

“**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

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Transmission Provider(s) that transmits and distributes electrical energy.

“**Transmission Service**” shall have the meaning set forth in Sections 3.1(2)(a), 3.1(3), 3.1(4)(a), and 3.1(5).

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

“**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)(ii)(B).

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

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

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; any reference in this Agreement to any section or Appendix means and refers to the section contained in, or Appendix attached to, this Agreement;
- (c) other grammatical forms of defined words or phrases have corresponding meanings to the defined words or phrases;
- (d) 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;
- (e) a reference to a Party to this Agreement includes that Party’s successors and

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permitted assigns;

- (f) 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;
- (g) headings are inserted for convenience only and shall not affect the interpretation of this Agreement or any section thereto;
- (h) the word “including” means “including without limitation”; and
- (i) the preamble hereto shall not form part of this Agreement.

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 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**ENERGY TRANSACTIONS****2.1 MP’s Energy**

- (1) Subject to the provisions of this Agreement, during the Contract Term MP shall sell to MH and MH shall purchase from MP that quantity of energy that MH, subject to Section 2.1(2), in its sole discretion requests on a Day-Ahead Basis (“**MP’s Energy**”), provided that the energy quantity requested in any hour shall not exceed 133 MWh per hour. MP shall offer and make available MP’s Energy to the Delivery Point and MH shall accept delivery at the Delivery Point and pay for MP’s Energy.
- (2) MH agrees to request from MP pursuant to Section 2.1(1) the energy quantity amount (expressed in MWh) determined as follows:

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over the Contract Term (the “**Minimum MP’s Energy Requested Amount**”).

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- (3) The Parties acknowledge that in accordance with Section 3.1 the Transmission Service shall be utilized for the delivery and receipt of MP's Energy. The Parties may by mutual agreement also request additional Firm Transmission Service or additional transmission service that is not Firm Transmission Service on a daily and/or monthly basis for the delivery and receipt of MP's Energy.
- (4) The Parties acknowledge that MP has in its sole discretion the right, but not the obligation, to source and/or supply and/or sell MP's Energy from third party purchases and/or Markets available to MP. Without limiting the generality of the foregoing, the Parties acknowledge that MP has the right but not the obligation to utilize any Market mechanisms that are available to MP throughout the Contract Term.
- (5) The Parties acknowledge and agree that: (a) MP has retained all Environmental Attributes for MP's Energy; and (b) for environmental reporting purposes, the Environmental Attributes of MP's Energy, is electrical energy that 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 Zone 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 MP's Energy pursuant to this Agreement.

2.2 MP's Energy Delivery Point

- (1) The Parties agree that the delivery point for MP's Energy that is sold by MP and purchased by MH 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 MP's 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.

TRADE SECRET DATA EXCISED**2.3 MP's Energy Title and Risk of Loss**

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

2.4 MP's Energy Ancillary Services

- (1) The Parties acknowledge and agree that: (a) MP shall be entitled to retain all of MP's Ancillary Services; (b) the price for MP's Energy does not include any value in respect of or related to MP's Ancillary Services; (c) MH shall use Commercially Reasonable Efforts to comply with all reasonable requests by MP to participate in the Market in respect of or related to MP's Ancillary Services; (d) MH shall be entitled to retain all of MH's Ancillary Services; (e) the price for MP's Energy is inclusive of the value in respect of or related to MH's Ancillary Services; and (f) MP shall use Commercially Reasonable Efforts to comply with all reasonable requests by MH to participate in the Market in respect of or related to MH's Ancillary Services.
- (2) In the event that MH receives any compensation or payment from the MISO or otherwise for MP's Ancillary Services that were offered or scheduled by MP, MH shall remit such compensation or payment to MP. In the event that MP receives any compensation or payment from MISO or otherwise for MH's Ancillary Services that were offered or scheduled by MH, MP shall remit such compensation or payment to MH.

2.5 MP's Pumped Energy and MH's Stored Energy**MP's Pumped Energy**

- (1) Subject to the provisions of this Agreement, during the Contract Term MP shall be entitled to offer to MH on a Day-Ahead Offer Basis when MP, in its sole discretion, determines excess renewable energy is available: (a) during the twelve (12) month period of each calendar year that is entirely within the

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Contract Term, up to a total of 750,000 MWh of energy; and (b) during such period of time within a portion of a calendar year that is within the Contract Term (and that calendar year is not entirely within the Contract Term), up to a total amount determined using a pro-rated portion of 750,000 MWh of energy for an entire calendar year, calculated by multiplying 750,000 by the total number of days in that calendar year that were within the Contract Term and dividing the result by the number of days in such calendar year (all energy offered by MP pursuant to this Section 2.5(1)(a) and (b) shall collectively be referred to as “**MP’s Pumped Energy**”). MP’s Pumped Energy shall not exceed in any hour 383 MWh under the Energy Exchange Agreement and this Agreement, subject to further agreement by MP and MH. The Parties acknowledge and agree that MP shall have no obligation to sell and deliver any quantity of MP’s Pumped Energy and MH shall have no obligation to purchase and receive any quantity of MP’s Pumped Energy. MH agrees to pay MP for the applicable quantity of MP’s Pumped Energy at MP’s Pumped Energy Price and the provisions of Section 3.2(9) shall apply to the Parties in respect of MP’s Pumped Energy.

(2) MH’s Stored Energy

Subject to the provisions of this Agreement, during the Contract Term MP shall be entitled to require MH to offer to MP the amount of energy that MP has requested on a Day-Ahead Offer Basis that MH offer to MP during the Contract Term, provided that: (a) the total amount of energy offered by MH shall not exceed for the corresponding time period referred to in Section 2.5(1)(a) or (b) above, the total amount of MP’s Pumped Energy that was offered by MP during that same time period; and (b) the energy offered by MH shall not exceed in any hour 383 MWh under the Energy Exchange Agreement and this Agreement subject to further agreement by MP and MH (all energy offered by MH pursuant to the request of MP pursuant to this Section 2.5(2)(a) and (b) shall collectively be referred to as “**MH’s Stored Energy**”). The Parties acknowledge and agree

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that MH shall have no obligation to sell and deliver any of MH's Stored Energy and MP shall have no obligation to purchase and receive any quantity of MH's Stored Energy. MP agrees to pay MH for the applicable quantity of MH's Stored Energy at MH's Stored Energy Price and the provisions of Section 3.2(9) shall apply to the Parties in respect of MH's Stored Energy.

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 which includes:
 - (A) MH pursuant to transmission service request number 79258492 for 133 MW of northbound transfer capability (the "**Northbound 133 MW US TSR**"); and
 - (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 (such filed MP transmission service requests collectively the "**US TSRs**"),

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

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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 which includes:

(A) MH’s transmission service request number 76703155 (as of the Effective Date) for 500 MW of northbound transfer capability pursuant or any successor transmission service request for a minimum of 200 MW of northbound transfer capability (the “**Northbound 500 MW Canadian TSR**”); and

(ii) a total 883 MW of southbound transfer capability;

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”);

(f) a facilities construction agreement would be required to be entered into in accordance with the requirements of MH’s Transmission Provider for

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

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- (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 MP's Energy that is sold by MP and purchased by MH pursuant to this Agreement from the Delivery Point, subject to:
- (a) MH receiving from MH's Transmission Provider pursuant to MH's OATT, 133 MW of northbound Firm Transmission Service in respect of the Northbound 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 MP's Energy to be received and purchased by MH pursuant to this Agreement from 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 MP's Energy made available and sold by MP pursuant to this Agreement from 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) MH 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 made available and sold by MP and purchased by MH pursuant to this Agreement to the Delivery Point, subject to:
- (a) MH receiving from MISO, pursuant to the TARIFF, 133 MW of northbound Firm Transmission Service in respect of the Northbound 133 MW US TSR as a result of the US Upgrades being constructed and placed in-service.
- (5) MH 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 MH pursuant to this Agreement from 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 MP's Transmission Provider for the delivery of the Firm Energy received and purchased by MH pursuant to this Agreement to the Delivery Point with the exception of those charges and amounts that MP incurs or is subject to due to arising from MP offering the Energy into the MISO market or other applicable Market (the "**MP Charges**").
- (6) MP acknowledges and agrees that is responsible for the payment of the MP Charges.

3.2 Scheduling

TRADE SECRET DATA EXCISEDMP's Energy

- (1) The Parties shall Schedule MP's Energy provided that MP's Energy that is Scheduled shall:
 - (a) not exceed in any hour 133 MWh per hour; and
 - (b) not be Scheduled during MP's Designated Peak Hours.
- (2) MP shall during each day, during each month of the Contract Term, subject to the provisions of this Agreement offer into the Day-Ahead Energy and Operating Reserve Market, in accordance with the applicable MISO requirements, MP's Energy and MH shall submit a Dispatchable Interchange Schedule with a Bid into the Day-Ahead Energy Market for MP's Energy, in accordance with the applicable MISO requirements.
- (3) The price at which MP offers MP's Energy pursuant to this Agreement, into the Day-Ahead Energy and Operating Reserve Market shall be at the sole discretion of MP. The price of MH's Bid for MP's Energy pursuant to this Agreement into the Day-Ahead Energy and Operating Reserve Market shall be at the sole discretion of MH.
- (4) MP shall advise MH of any curtailment of MP's Energy pursuant to Section 3.6. Upon receipt of such notice, MH agrees not to submit a Bid and/or will curtail any Schedules for the amount of MP's Energy that has been curtailed and agrees to disclaim any right or entitlement to such amount of MP's Energy for the duration of the curtailment. Such curtailment time period shall decrement the Minimum MP's Energy Requested Amount for each one (1) month curtailment time period the amount determined as follows:

Minimum MP's Energy Requested Amount ÷ 240;

provided that the said monthly amount will be pro-rated for any curtailment time period that is less than one (1) month in duration.

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- (5) In the event during any applicable hour during the Contract Term:
- (a) MH's Bid in respect of any amount of MP's Energy does not clear the Day-Ahead Energy and Operating Reserve Market; and/or
 - (b) any portion of MP's Energy was curtailed, restricted or reduced pursuant to Sections 3.4, 3.5 or 3.6 or Article XII,

MP shall have no obligation to sell and deliver and MH shall have no obligation to purchase and receive that quantity of MP's Energy. For greater certainty, all of the energy quantities referred to in this Section 3.2(5) shall decrement the Minimum MP's Energy Requested Amount.

- (6) MP may offer MP's Energy in a manner that would enable MP to supply MP's Energy from MP's resource(s) including MP's electrical generation facility(s), third party purchases and/or Markets available to MP, and has the right to utilize any Market mechanisms that are available to MP throughout the Contract Term to satisfy its obligations under this Agreement.
- (7) MH shall be responsible for and pay the costs and expenses associated with the purchase and sale of MP's Energy under the applicable OATT and/or TARIFF, including without limitation any Market Settlement Amounts, with the exception of: (i) MP Charges; (ii) all amounts arising due to MP's curtailment of MP's Energy pursuant to Section 3.6; and (iii) any costs or expenses associated with or related to the generation of MP's Energy. For greater certainty, this Section 3.2 and this Agreement does not allocate responsibility for construction, operation and maintenance costs related to the 500 kV Transmission Interconnection which will be addressed in the Canadian FCA and the US FCA.
- (8) MP shall utilize the Market mechanisms authorized by the TARIFF with MP's offer in the Day-Ahead Energy and Operating Reserve Market in order to supply MH with MP's Energy under this Agreement. MH shall submit a Dispatchable Interchange Schedule with a Bid, if applicable, in accordance with the timing requirements of the Market Business Practices Manuals.

TRADE SECRET DATA EXCISEDMP's Pumped Energy and MH's Stored Energy

- (9) (a) MP shall submit a Financial Schedule in the Day-Ahead Energy and Operating Reserve Market for the applicable quantity of MP's Pumped Energy specifying MP as the seller and MH as the buyer. [**TRADE SECRET DATA EXCISED**]
- (b) MH shall submit a Financial Schedule in the Day-Ahead Energy and Operating Reserve Market for the applicable quantity of MH's Stored Energy specifying MH as the seller and MP as the buyer. [**TRADE SECRET DATA EXCISED**]
- (c) MH shall approve for MP's Pumped Energy and MP shall approve for MH's Stored Energy, if required pursuant to the Market mechanisms in effect at the applicable time, the Financial Schedule submitted by the other Party pursuant to this Section 3.2(9)(a) and (b), as applicable and each Party shall take such other actions as may be reasonably requested by the other Party pursuant to the Market mechanisms in effect at the applicable time in respect of such Financial Schedule.
- (10) The Parties acknowledge that pursuant to the TARIFF MISO will: (i) charge MP and pay MH the [**TRADE SECRET DATA EXCISED**] for the quantity of MP's Pumped Energy; and (ii) charge MH and pay MP the [**TRADE SECRET DATA EXCISED**] for the quantity of MH's Stored Energy. The Parties also acknowledge that the Financial Schedules submitted in accordance with Section 3.2(9), together with: (A) MH's obligation to pay for the quantity of MP's Pumped Energy at MP's Pumped Energy Price, shall satisfy MH's obligation(s) in respect of MP's offer of MP's Pumped Energy; and (B) MP's obligation to pay for the quantity of MH's Stored Energy at MH's Stored Energy Price, shall satisfy MP's obligation(s) in respect of MH's offer of MH's Stored Energy.

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- (11) The Parties further acknowledge and agree that if: (i) either Party is no longer a Market Participant; or (ii) the MISO Market no longer exists; or (iii) the TARIFF no longer exists; or (iv) the TARIFF is amended or revised to the extent, that one or both of the Parties is or will be materially adversely impacted when such amendments or revisions are considered in the context of the impact they will have on the Parties continued compliance with the requirements of Sections 2.5, 3.2(9) and 3.2(10), and pursuant to Section 8.1(3) changes to Sections 2.5, 3.2(9) and 3.2(10) to address the material adverse impact such amendments or revisions to the TARIFF had on the Parties have not been developed and agreed to by the Parties; or (v) [**TRADE SECRET DATA EXCISED**] as referred to in Sections 4.1(2) and (3) is no longer available to be used in the establishment of the price for MP's Pumped Energy and MH's Stored Energy, then either Party shall on notice to the other Party have the right to immediately terminate the rights and obligations of the Parties pursuant to Section 2.5, 3.2(9) and 3.2(10), and the provisions of Sections 2.5, 3.2(9) and 3.2(10) shall no longer constitute a legally valid and binding obligation enforceable against either Party.

General

- (12) As of the Effective Date, the Parties are Market Participants, and the terms of Sections 3.2(8) and 3.2(9) reflect 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 Business Practices Manuals are no longer in effect or are revised, to the extent that the requirements of Sections 3.2(8) and 3.2(9) 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 that is consistent with the rights and obligations of

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the Parties pursuant to this Agreement shall be established and the Parties agree to direct the Operating Committee to immediately enter into good faith negotiations to establish such new Scheduling mechanism failing which the establishment of a new Scheduling mechanism shall be determined pursuant to Article XIV on the condition that it is consistent with the rights and obligations under this Agreement prior to the revision.

- (13) 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 all of the energy purchased and sold pursuant to the provisions of this Agreement; 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 all of the energy purchased and sold pursuant to the provisions of this Agreement shall be accounted for and allocated equally between the Parties.
- (14) 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 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 8.1(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

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with Section 8.1(3) shall make recommendations to the Parties about what amendments or revisions to the Agreement (if any) would be appropriate to address the TARIFF changes.

- (15) 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 Initiative 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 its respective Transmission Providers to maintain an OATT in effect during the Contract Term.

3.4 MH's Energy Curtailments

MH shall have the right to curtail, restrict, or reduce the purchase and receipt of any of MP's Energy to the extent a Force Majeure event precludes MH's ability to accept any of MP's Energy under this Agreement.

3.5 Transmission Provider Curtailments

- (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 MP's Energy the said energy shall be curtailed, restricted or reduced in accordance with the provisions of that Transmission Provider's OATT.
- (2) Subject to Section 17.3, in the event MH or MP or its respective Transmission Provider ceases to have an OATT, curtailment or reduction of energy Schedules hereunder in order to maintain the reliable operation of the interconnected AC transmission system, shall be implemented exclusively in accordance with this Section 3.5(2). Curtailment of energy deliveries under this Section 3.5(2) to accommodate such events shall be implemented as follows, in the order

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specified, until the required amount of loading relief has been obtained: (a) all transmission service or transactions, that are lower in curtailment priority than Firm Transmission Service and that 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 3.5(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 the applicable Transmission Provider relative to all uses of such AC transmission system at the time shall be implemented in a comparable and non-discriminatory manner.

3.6 MP's Curtailments

MP shall have the right to curtail, restrict or reduce the sale and supply of any of MP's Energy, in accordance with either of the following provisions:

- (a) to the extent a Force Majeure precludes MP's ability to supply any of MP's Energy under this Agreement; or
- (b) to the extent necessary to avoid curtailing, restricting or reducing service to MP'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.

3.7 Curtailment Notice

Each Party shall provide as much notice as practicable to the other Party regarding the curtailment, restriction or reduction or refusal of the supply or acceptance, as applicable, of MP's Energy pursuant to Section 3.4 or Section 3.6. This shall include the anticipated duration of the curtailment, restriction, or reduction or refusal of the supply or acceptance, as applicable, of MP's Energy and where practicable daily updates.

TRADE SECRET DATA EXCISED**ARTICLE IV****ENERGY PRICING****4.1 Energy Pricing**

- (1) The price for MP's Energy [**TRADE SECRET DATA EXCISED**]
- (2) The price for MP's Pumped Energy [**TRADE SECRET DATA EXCISED**]
- (3) The price for MH's Stored Energy [**TRADE SECRET DATA EXCISED**]
- (4) [**TRADE SECRET DATA EXCISED**]
- (5) [**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 A attached hereto. A Party may change the designation of the bank set out in Appendix A by notice to the other Party in accordance with Section 17.1 hereof. Payment shall be deemed to be made when received by the bank designated in Appendix A.

5.4 Rendering Invoices

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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.

5.5 Payment Amounts

- (1) Except as hereinafter expressly provided, the amount payable by MH to MP 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 of MP's Energy was Scheduled for that month for each applicable hour as follows:
 - (i) **[TRADE SECRET DATA EXCISED]**; less
 - (b) the sum of the amount determined for each applicable hour that a quantity of MP's Energy was curtailed, restricted or reduced pursuant to Sections 3.4, 3.5, 3.6 or Article XII that had been Scheduled during any day for that month and where a net amount was owed by MH pursuant to Section 5.5(1)(a), as follows:
 - (i) **[TRADE SECRET DATA EXCISED]**; plus
 - (c) any costs and expenses associated with the supply and receipt of MP's Energy under the applicable OATT that were billed to and paid by MP but were amounts that were required to be paid by MH pursuant to Section 3.2(7); plus
 - (d) the sum of the amount determined for each applicable hour that a quantity of MP's Pumped Energy was offered for that month that MH is obligated to pay for that quantity of MP's Pumped Energy pursuant to Section 3.2(9) for that month determined as follows:
 - (i) **[TRADE SECRET DATA EXCISED]**; less
 - (e) the sum of the amount determined for each applicable hour that a quantity of MH's Stored Energy was offered for that month that MP is

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obligated to pay for that quantity of MH's Stored Energy pursuant to Section 3.2(9) for that month determined as follows:

- (i) **[TRADE SECRET DATA EXCISED]**

Provided that if during any particular month of the Contract Term the total of the amounts determined pursuant to Section 5.5(b) and (e) exceeds the total of the amounts determined pursuant to Sections 5.5(a), (c) and (d), MP shall pay MH the difference between the total of the said amounts.

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, estimates may be used on the monthly invoice to be followed with an adjustment to reflect actual charges on a future invoice. 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, MP shall charge or credit MH for the change in such third party invoice within sixty (60) Business Days of MP'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

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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 objection 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 shall be made within ten (10) Business Days of the receipt of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date the payment or reimbursement is paid. Inadvertent overpayments shall be deducted by the Party receiving such overpayment from subsequent monthly invoices rendered by such Party. Any dispute with respect to an invoice 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 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

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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 either 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 XV 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 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**

TRADE SECRET DATA EXCISED**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.

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

All applicable matters relating to the metering of MP's 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

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Committee.

ARTICLE VIII**OPERATING COMMITTEE****8.1 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 & Planning for MP or a duly authorized delegate from MP. Both MH and MP shall have one vote, 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 implement the terms and conditions of this Agreement in accordance with Section 5.12 and Section 5.13;
 - (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 for operating procedures for the conduct of meetings and the recording of minutes;
 - (d) make recommendations to the Parties concerning amendment and revision of this Agreement;
 - (e) perform any other obligations expressly provided for in this Agreement to be performed by the Operating Committee and any other matters as

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the Parties may agree from time to time;

- (f) settle any controversy, claim or dispute prior to referring such matters to the Executive Officers of MP and MH for resolution in accordance with Section 14.1; and
- (g) make and implement decisions concerning Section 17.1 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 IX**REPRESENTATIONS, WARRANTIES AND COVENANTS****9.1 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 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 XI, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
 - (c) subject to Article XI, 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) subject to Article XI, this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a 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

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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 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 all of MP’s Energy, as applicable;
- (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 agreements” and all

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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 that constitute "forward contracts" and a "swap participant" with respect to any transactions that constitute "swap agreements";
- (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 Bankruptcy Code;
- (p) certain provisions of this Agreement grants each Party the contractual right to "cause the liquidation, termination or acceleration" of 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) upon a bankruptcy of the other Party, a Non-defaulting 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(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18);
- (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

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products or by products thereof; and (ii) is offered or enters into this Agreement solely for purposes related to its business as such;

- (t) for the purposes of this Agreement, it is not a "utility" as such term is used in 11 U.S.C. Section 366. Each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort;
- (u) no Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (v) all transactions under this Agreement and this Agreement itself are not "swaps" as defined in Section 1a(47)(A) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1 et. seq. (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) or lawful Commodity Futures Trading Commission ("CFTC") regulations promulgated thereunder ("Regulations") as contracts of sale of nonfinancial commodities for deferred shipment or delivery intended to be physically settled. In the event that any particular transaction is deemed by an agency of competent jurisdiction (whether or not in a final adjudication) to be a "swap" as defined above, or not to be qualified for the exclusion under Section 1a(47)(B) described above, any attendant recordkeeping, reporting or other regulatory obligations shall be timely and completely fulfilled by MP; and consistent therewith, in such event, MP and MH have elected, under Section 4r(a)(3)(C) of the Act (7 U.S.C. Section 6r(a)(3)(C)), that MP shall fulfill all counterparty reporting obligations of either party under the Act and the interim and final Regulations. Notwithstanding the above, MH shall meet all its own then applicable

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recordkeeping obligations under the Act and interim and final Regulations (i) which are not the exclusive responsibility of MP under the Act or as provided above, and (ii) which are applicable to MH under the Act despite MH not being a U.S. person. Further, MH will cooperate in a reasonably timely and complete manner in such event to provide MP information to enable MP to meet its responsibilities under the Act.

(2) MH makes the following additional representations and warranties to MP as of the Effective Date and which 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 and which 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.

9.2 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

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- 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 United States of America.

9.3 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 41-04181150; 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 X**CONFIDENTIALITY****10.1 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:

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- (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 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

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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 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 10.1(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,

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or intention or commitment to grant any right, title or interest of any nature whatsoever in or to the Confidential Information.

- (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 10.1 shall survive any termination of this Agreement for a period of three (3) years.

ARTICLE XI**CONDITIONS PRECEDENT****11.1 MH's Condition Precedent**

The obligation of MH to complete the transactions referenced herein shall be subject to and contingent upon the fulfillment of the following condition 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) calendar days of the Effective Date, approving MH entering into this Agreement;
- (b) the Parties executing on the Effective Date the 133 MW Energy Sale Agreement and all conditions precedent to that agreement being satisfied by the date specified in that agreement;
- (c) MH receiving from MH's Transmission Provider, on or before June 1, 2025, pursuant to MH's OATT, 133 MW of northbound Firm

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Transmission Service in respect of the Northbound 133 MW Canadian TSR as a result of the Canadian Upgrades being constructed and placed in-service; and

- (d) MH receiving from MISO, on or before June 1, 2025, pursuant to the TARIFF, 133 MW of northbound Firm Transmission Service in respect of the Northbound 133 MW US TSR as a result of the US Upgrades being constructed and placed in-service.

11.2 MP's Condition Precedent

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

- (a) the Parties executing on the Effective Date the 133 MW Energy Sale Agreement and all conditions precedent to that agreement being satisfied by the dates specified in that agreement.

11.3 Conditions Precedent Notices

Each Party shall notify the other Party as soon as practicable following the satisfaction or the failure to satisfy MH's Conditions Precedent or MP's Condition Precedent, as applicable.

11.4 Termination of Agreement

This Agreement shall, subject to the obligations of the Parties in Article X, terminate on the date notice has been received by one Party from the other Party that:

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

ARTICLE XII**FORCE MAJEURE**

TRADE SECRET DATA EXCISED**12.1 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 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 MH's markets; (b) MH's inability to economically use or resell MP's Energy, including MH's ability to purchase MP's Energy, at a price less than the prices provided for in this Agreement; and (c) MP's ability to sell MP's Energy

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at a price greater than the prices provided for in this Agreement.

ARTICLE XIII**CREDITWORTHINESS****13.1 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 preparation, certification and delivery of the statements.

13.2 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

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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 13.2(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 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 XV of this Agreement and the Requesting Party

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shall have the right to exercise any of the remedies provided for under that Article XV. Nothing contained in this Article XIII 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.

13.3 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 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 the 250 MW System Power Sale Agreement, 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

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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 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 this Agreement and the 250 MW System Power Sale Agreement. 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 the 250 MW System Power Sale Agreement shall be a condition precedent to the payment of any amounts due by the Non-defaulting Party to the Defaulting Party under either 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.

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ARTICLE XIV**DISPUTE RESOLUTION****14.1 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 controversy, claim or dispute is not resolved within thirty (30) calendar days after referral to the Executive Officers, either Party may proceed to arbitration.

14.2 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.

14.3 Arbitration Proceedings

Subject to Section 14.1 above and Section 10.1(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,

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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, 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.

14.4 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

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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.

14.5 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.

14.6 Continuation of Performance

Pending the final decision of the arbitrators, the Parties agree, subject to Section 15.2, 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.

14.7 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.

14.8 Enforcement

Any decision (including orders arising out of disputes as to the scope or appropriateness

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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.

14.9 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 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 XV**DEFAULT/TERMINATION****15.1 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

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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;
- (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

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- 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 13.2;
 - (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 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 17.1 of the 133 MW Energy Sale Agreement) provided that the Non-defaulting Party shall have the unfettered discretion whether to

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declare an Event of Default under this Agreement associated with such occurrence; or

- (1) 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 15.3.

15.2 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 Date has been declared and notice thereof given pursuant to Section 15.3; 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.

15.3 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

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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 the 250 MW System Power Sale Agreement. 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 either 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 either 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 effected, but failure to give notice shall not impair the validity of any setoff and recoupment.

15.4 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.

15.5 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 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.

TRADE SECRET DATA EXCISED**15.6 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 XVI**LIMITATION OF LIABILITY****16.1 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 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

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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.

ARTICLE XVII**GENERAL****17.1 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

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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
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

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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.

17.2 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.

17.3 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 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 transmission function to take or refrain from taking any action.

17.4 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

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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.

17.5 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 by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto.
- (2) The Parties agree:
 - (a) MP shall be deemed to be in exclusive control of the MP's Energy prior to the delivery by MP and receipt by MH of MP's Energy at the Delivery Point and MP 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 were caused by the gross negligence or wilful misconduct of MH; and
 - (b) MH shall be deemed to be in exclusive control of MP's Energy from and after delivery by MP and receipt by MH of MP's Energy at the Delivery Point and shall be responsible for, and shall indemnify MP from, any damages or injury MP or any third party may suffer or incur, caused

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thereby except to the extent such damages or injury is caused by the gross negligence or wilful misconduct of MP.

For the purposes of this Section 17.5(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 Party shall be liable under this Agreement in respect of any settlement of a claim unless it has consented in writing to such settlement.

17.6 Governing Law

- (1) In respect of matters under this Agreement relating to or arising out of the sale of MP’s Energy and MP’s Pumped 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 state of Minnesota and United States. Any disputes arising under this Agreement that are not resolved by arbitration shall be subject to the exclusive jurisdiction of the courts of the state of Minnesota and the Supreme Court of the United States.
- (2) In respect of matters under this Agreement relating to or arising out of the offering and all other matters in respect of the MH’s Stored 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

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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.

17.7 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.

17.8 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.

17.9 No Representation or Warranty for Injury

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

17.10 Surviving Termination

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 MP to MH of and payment from MH to MP for or related to MP's Energy and MP's

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Pumped Energy; (b) the billing by MH to MP of and payment from MP to MH for or related to MH's Stored Energy; (c) the confidentiality provisions pursuant to Article 10 of this Agreement; and (d) Section 17.5, 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.

17.11 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.

17.12 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.

17.13 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.

17.14 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.

17.15 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, 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

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request.

17.16 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.

17.17 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.

17.18 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

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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, INC.

APPENDIX A
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]

Appendix B

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