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AQUILON POWER SILVERHILL FUND L.P.

LIMITED PARTNERSHIP AGREEMENT

As of June 12, 2006

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## **AQUILON POWER SILVERHILL FUND L.P.**

THIS LIMITED PARTNERSHIP AGREEMENT (the “Agreement”) is made as of the 12<sup>th</sup> day of June, 2006 between Silverhill Ltd., a corporation existing under the laws of the Province of Ontario (hereinafter referred to as the “General Partner”), the initial limited partner referred to on the signature page hereof (the “Initial Limited Partner”) and each party who, from time to time, becomes a Limited Partner in accordance with the terms of this Agreement;

WHEREAS Aquilon Power Silverhill Fund L.P. (the “Fund”) was formed as a limited partnership under the laws of the Province of Ontario by the filing of a Declaration pursuant to the Act;

AND WHEREAS the Fund intends to sell Units to investors and to admit as Limited Partners those investors whose Subscription Agreements are accepted by the General Partner;

AND WHEREAS certain defined terms used in this Agreement have the meanings set out in Section 17;

NOW THEREFORE, in consideration of the respective covenants and agreements of the parties herein contained, and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

### **1. ORGANIZATIONAL MATTERS.**

#### **1.1 Formation and Existence**

The General Partner hereby represents and warrants to the other parties to this Agreement that (i) the Fund was formed on June 12, 2006, (ii) the Fund has filed a Declaration establishing the Fund as a limited partnership, (iii) such Declaration has not been withdrawn as of the date hereof, and (iv) the Fund continues as a limited partnership under the Act as of the date hereof.

#### **1.2 Name**

The name of the Fund shall be “Aquilon Power Silverhill Fund L.P.” or such other name or names as the General Partner may from time to time designate. The Fund may also use the French form of any such name. The General Partner shall promptly notify each Limited Partner of any change in the name of the Fund. The surname or a distinctive part of the corporate name of a Limited Partner shall not appear in the name of the Fund unless it is also the surname or a distinctive part of the corporate name of the General Partner.

#### **1.3 Registered Agent and Office**

The Fund’s registered agent for service of process on the Fund and the address of the Fund’s principal place of business and registered office shall be at the offices of the General Partner, 280 King Street East, 4th Floor, Toronto, ON M5A 1K7, or such other agent or office in the Province of Ontario as the General Partner may from time to time designate. The General Partner

shall promptly notify each Limited Partner of any change in the Fund's principal place of business and registered office.

#### **1.4 Purpose**

The purpose of the Fund is to seek to identify and exploit arbitrage opportunities in the physical electricity markets that may exist; to buy physical transmission capacity, financial transmission rights (FTR's), and transmission congestion credits (TCC's) to facilitate or hedge arbitrage transactions; and to carry on any other activity in furtherance thereof, in connection therewith or ancillary thereto, which may be lawfully carried on by a partnership formed under the Act, including all power and authority to enter into, make and perform all such contracts and other undertakings and to engage in all activities and transactions and take any and all actions necessary, appropriate, desirable, incidental or convenient to or for the furtherance or accomplishment of the above purposes or the furtherance of any of the provisions herein set forth and to do every other act and thing incidental thereto or connected therewith, including investing of funds of the Fund in Short-Term Investments pending their utilization or disbursement, and any and all of the other powers that may be exercised on behalf of the Fund by the General Partner pursuant to this Agreement. All cash of the Fund shall be segregated and invested in Short-Term Investments to the extent it is not then required to provide for distributions, expenses or investments. A significant portion of the Short-Term investments will be used as collateral to support irrevocable letters of credit, issued by a major financial institution, in favour of trade counter parties such as the regional Power Pools or directly with a bi-lateral counter party. These Letters of Credit will suffice as the Fund's required "prudential" (security) deposit with the counterparty, and guarantee/support any commitments resulting from electricity transactions.

#### **1.5 Investment in Other Jurisdictions**

The Fund shall use reasonable efforts not to carry on business in any jurisdiction other than the Province of Ontario unless the General Partner has obtained reasonable assurances that the carrying on of such business in such jurisdiction does not impose material liability on the Limited Partners beyond the liability to which the Limited Partners are exposed under the laws of the Province of Ontario.

## **2. UNITS.**

### **2.1 Units**

- (a) The interests of the Limited Partners in the Fund shall be divided into and represented by units issued in accordance with this Agreement ("Units"), each representing an equal undivided share of the aggregate interests of the Limited Partners as determined pursuant to this Agreement.
- (b) Except as otherwise expressly provided herein, each Unit shall entitle the holder thereof to the same rights and subject the holder to the same obligations as the holder of any other Unit and no Limited Partner shall be entitled to any privilege, priority or preference in relation to any other Limited Partner.

## **2.2 Number of Units**

The number of Units authorized to be issued by the Fund shall be unlimited.

## **2.3 Determination of Net Asset Value**

- (a) The Net Asset Value of the Fund will be determined monthly, in accordance with the procedures set out in Section 14 or as may be determined from time to time by the General Partner.
- (b) The Net Asset Value per Unit on any Valuation Date shall be calculated by dividing the Net Asset Value by the number of Units outstanding on such Valuation Date before giving effect to any issue or redemption of Units to be implemented on that date, the result being adjusted to the nearest whole cent. The Net Asset Value per Unit on any other date shall be calculated by dividing the Net Asset Value by the number of Units outstanding as of the most recent prior Valuation Date after giving effect to any issue or redemption of units to be implemented on such date, the result being adjusted to the nearest whole cent. The Net Asset Value per Unit shall be expressed in Canadian dollars or in the discretion of the General Partner in United States dollars or any foreign currency.

## **2.4 Fractional Units**

The Fund may issue fractional Units which shall not, except to the extent that they represent in the aggregate one or more whole Units, entitle a holder thereof to notice of or to attend or to vote at meetings of Unitholders of the Fund. Subject to the foregoing, fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

## **2.5 Subdivision or Consolidation**

The General Partner may, from time to time cause the Units of the Fund to be subdivided or consolidated.

## **2.6 Subscription for Units**

- (a) Dollar subscriptions may be made orally, in writing or electronically two business days prior to the monthly Valuation Date. A subscription must be reduced to writing in such form as may be prescribed from time to time by the General Partner. Payment for subscription accompanied by a completed Subscription Agreement must be received no later than 12:00 noon Toronto time on the Valuation Date.
- (b) Notwithstanding anything herein contained to the contrary, the General Partner shall have the right, privilege and power in its absolute and uncontrolled discretion to accept or refuse subscriptions for Units of the Fund absolutely for any reason whatsoever including, without limitation, the proper management of the Fund's investment portfolio or on such conditions as the General Partner deems appropriate.



- (c) The Subscription of Units shall be affected at the Net Asset Value on the relevant Valuation Date. Within ten business days of the Subscription Date, the General Partner will provide to the Unitholder the estimated number of units purchased. The General Partner will record and report to the Unitholder the final number of Units purchased no later than sixty days after the Subscription Date and coincident with the finalization of the calculation of the Net Asset Value. The final number of units is subject to modification only in the event of a third party counterparty energy price or energy transaction cost revision.
- (d) The General Partner, shall also have the right, privilege and power in its absolute and uncontrolled discretion to establish and vary from time to time minimum subscriptions for initial and subsequent investments based on amounts expressed in Canadian currency or based on number of Units of the Fund and to accept or refuse any subscriptions for amounts less than the minimum subscription amount, if any, in effect at that time. The minimum subscription amount at any time may vary with the nature of the subscription in the manner specified by the General Partner.
- (e) Subscriptions for Units can only be made through investment dealers.

## **2.7 Certificates and Entry on Register**

- (a) No certificates representing Units will be issued to purchasers of Units.
- (b) No holder of a Unit will be entitled to a certificate or other instrument from the Fund or the registrar and transfer agent for the Units evidencing that person's interest in or ownership of Units. The Unitholder's ownership interest will be shown on the records maintained by the General Partner. All distributions of Units will be made by the Fund to the holders of the Units.

## **2.8 Register**

A register of Unitholders shall be maintained at the principal office of the General Partner, The person registered as a Unitholder on the register of the Fund shall be treated as the holder and owner of such Unit for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders.

## **2.9 Transfer of Units**

Transfers of ownership of Units may only be effected with the prior written consent of the General Partner and in accordance with Section 11 hereto.

## **2.10 Redemption by Unitholder**

- a) A Unitholder may require the Fund to redeem as of a Valuation Date any or all units of the Fund registered in the Unitholder's name, with sixty days notice.
- b) Redemptions may be processed without penalty, after the first anniversary of the Unitholder's initial investment.

- c) A 10% penalty, withheld for the benefit of remaining unitholders, will be assessed for redemptions that occur prior to the first anniversary of a Unitholder's initial investment.
- d) Unitholders have the right to redeem as of a Valuation Date, with not less than sixty days notice, some or all of their investment without penalty if their investment incurs a loss of 30% or more.

Each request for redemption must be duly signed by the Unitholder with, where required by the General Partner, satisfactory evidence of authorization. Any request for redemption may not be revoked without the consent of the General Partner.

The provisions of this Section 2.10 shall not apply to the Initial Limited Partner who shall be deemed to have redeemed his Unit and to have withdrawn from the Fund immediately following the admission to the Fund of a Limited Partner. Whereupon the Initial Limited Partner shall receive only the return of his initial capital contribution and have no further rights, interest or obligation of any kind whatsoever as a Partner of the Fund.

#### **2.11 Redemption by Fund**

- (a) The Fund shall have the right to redeem all Units held by a Unitholder who is a non-resident of Canada and the General Partner may, in their absolute and uncontrolled discretion, redeem all Units held by such a Unitholder.
- (b) Units redeemed pursuant to this Section 2.11 shall be effected at the Monthly Redemption Price on the relevant Valuation Date and shall be paid in accordance with Section 2.12.

#### **2.12 Payment for Redeemed Units**

- (a) The Monthly Redemption Price for Units of the Fund so redeemed shall be:
  - (i) paid in Canadian dollars or, in the discretion of the General Partner, may also be paid in any foreign currency provided that the obligation of the Fund to make payment of the Redemption Price for any Unit in a foreign currency shall be subject to applicable law including, without limitation, any foreign exchange controls;
  - (ii) in respect of which notice of redemption, as described in Section 2.10 or given by the Fund pursuant to Section 2.11, is received by the Fund at least sixty calendar days prior to a monthly Valuation Date, the Redemption Price on the relevant Valuation Date; and
  - (iii) for Units in respect of which notice of redemption, as described in Section 2.10 or given by the Fund pursuant to Section 2.11, is received by the Fund or given by the Fund, less than sixty calendar days prior to a monthly Valuation Date, the Redemption Price on the next relevant Valuation Date.

- (b) For the purpose of determining the Redemption Price of any redeemed Units, the valuation of redeemed Units and fractions thereof shall be made in accordance with Section 14, on the relevant Valuation Date. Redemptions will be paid by the Fund to the Unitholder as follows:
- (i) 90% of the Unitholder's redemption value will be paid within sixty calendar days after such Valuation Date.
  - (ii) The remaining 10% of the Unitholder's redemption value will be paid within one hundred and twenty calendar days after such Valuation Date.
- (c) Upon payment by the Fund to the Unitholder, the Unitholder shall cease to have any rights and the Fund and the General Partner shall be discharged from any and all claims, obligations and liabilities to the Unitholder with respect to the Units or fractions thereof so redeemed and paid provided that Units shall cease to be recorded in the Unit register on the Valuation Date that the redemption is processed. Payment shall be deemed to have been made in the amount of such payment upon the mailing of a cheque in a postage-paid envelope to the Unitholder at the Unitholder's last known address as recorded on the Unit register (if more than one address appears on the books of the Fund in respect of joint registered Unitholders, the cheque shall be mailed to the first address so appearing) or, with the Unitholder's consent, upon transmitting the amount of the payment by any means (including electronic funds transfer) to the account of such Unitholder as shown in the Fund's records provided that the cheque is paid on due presentation or the transfer to the account of a Unitholder is completed, as the case may be.
- (d) The Fund may not suspend or postpone redemptions except pursuant to:
- (i) events that prevent the liquidation of assets in an orderly fashion such as:
    - the default of a power pool or a counterparty on a receivable;
    - the absence of a bid or an offer from a creditworthy counterparty; or
    - the Limited Partner not possessing sufficient credit to transact.
  - (ii) events that prevent the Net Asset Value being accurately determined, such as a result of:
    - an unresolved dispute with a counterparty regarding prices, delivery failures, transaction costs and market rules or any other such matter for which a reserve cannot be fairly determined;
    - a lawsuit for which a reserve cannot be fairly determined; or
    - a significant interruption in market or business operations.

- (e) The Valuation Date for any such suspended redemption or delayed payment shall be the date on which redemption in fact takes place.

### **2.13 Account Statements**

Every Unitholder of the Fund shall receive monthly statements within 10 business days of the Valuation Date providing:

- a) the number of units held by the Unitholder,
- b) a summary of the estimated Net Asset Value per unit, with final Net Asset Value confirmation to appear on the monthly statement two months later to accommodate the receipt of all invoices from counterparties for the relevant reporting period; and
- c) such other information as the General Partner in its discretion from time to time considers advisable.

## **3. DISTRIBUTIONS.**

### **3.1 Allocation of Income or Loss**

The net income or loss and income or loss for tax purposes of the Fund for each fiscal year shall be allocated between the General Partner and the Limited Partners and among the Limited Partners by the General Partner in its sole discretion in accordance with the economics of this Agreement. In so allocating the net income or loss and income or loss for tax purposes, the General Partner shall act reasonably and fairly, taking into account the amount and timing of actual and anticipated distributions to each of the Partners, with a view to ensuring that, over the term of the Fund, each Partner is allocated a portion of the Fund's net income or loss and income or loss for tax purposes that substantially corresponds to the income that is distributed to or loss that is borne by that Partner, in the absence of circumstances that warrant a different result. Subject to the foregoing, the amount of net income or loss and income or loss for tax purposes of the Fund for a fiscal year allocated to the Limited Partners shall generally be allocated among the Limited Partners in proportion to their respective Units on a monthly basis, taking into account any factors as the General Partner may in its sole discretion determine are fair and reasonable under the circumstances. All such allocations by the General Partner shall be final and binding on all the Limited Partners.

### **3.2 Distributions in General**

The amount and timing of distributions by the Fund shall be at the sole discretion of the General Partner and its determinations are conclusive and binding upon the Limited Partners.

### **3.3 Distributions of Securities**

- (a) The General Partner shall have authority, but shall not be required, to distribute in-kind any marketable securities (as determined by the General Partner in its sole discretion) held by the Fund from time to time.

- (b) To the extent practicable, the General Partner shall not distribute in-kind any non-marketable securities or other non-cash assets (as determined by the General Partner in its sole discretion) except on final liquidation of the Fund.
- (c) In the event of any distribution in-kind, the value of the investment shall be determined as of the close of the Business Day prior to the date of the distribution in accordance with Section 14.
- (d) Investments distributed in-kind pursuant to this Agreement shall be subject to such legal, regulatory, contractual or other conditions and restrictions as are required or as were previously imposed on the Fund.

### **3.4 Withholding and Tax Payments**

The General Partner in its sole discretion may withhold and pay any taxes with respect to any Partner, and any such taxes may be withheld from any distribution otherwise payable to such Partner or, if no sufficiently large distribution is imminent, the General Partner may require the relevant Partner promptly to reimburse the Fund for the amount of such tax withheld or required to be withheld and paid over by the Fund. Taxes withheld on amounts directly or indirectly payable to the Fund or subsidiary pass-through vehicles and taxes otherwise paid by the Fund or subsidiary pass-through vehicles and not reimbursed pursuant to this Section 3.4 shall be treated for purposes of this Agreement as having been distributed to the appropriate Partners and paid by such Partners to the relevant taxing jurisdiction.

### **3.5 Limitation on Distributions**

Notwithstanding anything to the contrary contained in this Agreement, the Fund, and the General Partner on behalf of the Fund, shall not make a distribution to any Partner on account of its interest if such distribution would (i) violate applicable law or (ii) render the Fund insolvent.

## **4. TERM, DISSOLUTION, LIQUIDATION AND WINDING-UP OF FUND.**

### **4.1 Term**

The Fund does not have a fixed termination date.

### **4.2 Distribution of Fund Assets**

Notwithstanding Section 3, as promptly as is reasonably possible after a Dissolution Event and having regard to the illiquid nature of the Fund's assets, the affairs of the Fund shall be wound up and the Fund liquidated in an orderly manner. Following a Dissolution Event, the General Partner or the Liquidator, as applicable, may sell or otherwise dispose of all or such part of the Fund's assets as may be sold or otherwise disposed of on commercially reasonable terms (to the extent that the General Partner or the Liquidator, as applicable, determines that such sale or other disposition is commercially desirable), as determined by the General Partner or the Liquidator, as applicable, in its sole discretion. Thereafter, there shall be made a final distribution of the assets of the Fund valued as of the date of such dissolution in the following order of priority:

- (a) to creditors of the Fund, including Partners who are creditors to the extent permitted by law, in satisfaction of liabilities of the Fund (whether by payment thereof or the making of reasonable provision for payment thereof, including by means of the retention of such amounts as shall be determined by the General Partner or the Liquidator appointed pursuant to Section 4.3 to be necessary or advisable to maintain as reserves to satisfy any contingent, conditional or unmatured claims and obligations), other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to Partners under Section 3 and paragraph (b) of this Section 4.2; and
- (b) to the Partners in accordance with Section 3.

#### **4.3 Liquidator**

In the event the Fund is dissolved at a time when the General Partner is unable or unwilling to act as a liquidator of the Fund, a Majority-In-Interest of the Limited Partners shall elect one or more liquidators (each a "Liquidator") to manage the liquidation of the Fund and distribute its assets pursuant to this Section 4, and to perform all acts, including terminating the existence of the Fund pursuant to Section 4.5, and to engage in all activities and transactions which it may deem necessary, desirable, advisable or incidental thereto.

#### **4.4 Dissolution Events**

The Fund will dissolve and its affairs shall be wound up upon the first to occur of any of the following events (each, a "Dissolution Event"):

- (a) automatically on the date which is 180 days following the date of the bankruptcy, withdrawal, commencement of liquidation proceedings, resignation, insolvency, winding-up or dissolution of the General Partner, unless prior to the expiration of such 180-day period, the Limited Partners elect a new General Partner of the Fund in accordance with Section 5.5;
- (b) the General Partner causes a declaration of dissolution to be filed in accordance with the Act, provided that:
  - (i) the General Partner shall not file a declaration of dissolution without the prior written consent of each Limited Partner and
  - (ii) the General Partner shall be required to file a declaration of dissolution (x) upon the written consent of each Limited Partner, (y) if there are no remaining Limited Partners of the Fund, unless the Fund is continued in accordance with the Act, or (z) if the Fund is dissolved (including for reasons set out in this Section 4.4); or
- (c) subject to Section 4.6, upon the occurrence of any event which, under the laws of the Province of Ontario, causes the dissolution of the Fund.

#### **4.5 Termination**

The Fund shall terminate when (i) all of the assets of the Fund, after payment of or due provision for all debts, liabilities and obligations of the Fund, shall have been distributed to the Partners in the manner provided for in this Agreement and (ii) the Fund is dissolved pursuant to the terms hereof. Notwithstanding the dissolution of the Fund, this Agreement shall not terminate until the provisions of Section 4.2 shall have been complied with.

#### **4.6 No Dissolution**

The Fund will not be dissolved or terminated by the resignation, removal, death, incompetence, bankruptcy, insolvency, dissolution, liquidation, winding-up or receivership of, or the admission or withdrawal of, the General Partner (or any partner thereof) or any Limited Partner (or any partner thereof) or upon the transfer of any Units, except as otherwise provided in this Agreement. Except as provided for in this Agreement, no Limited Partner shall have the right to ask for the dissolution of the Fund, for the winding-up of its affairs or for the distribution of its assets.

### **5. FUNCTION AND POWERS OF THE PARTNERS AND MANAGEMENT.**

#### **5.1 Interest of General Partner**

The General Partner, in its capacity as general partner of the Fund, shall hold a 0.001% undivided general partner interest in the Fund. The General Partner shall have the right to receive distributions in respect of such interest only as is provided for in this Agreement.

#### **5.2 Assignment of General Partner Interest**

There shall be at all times at least one general partner of the Fund. To the extent permitted by applicable law, the General Partner may, without the necessity of obtaining the consent of any Limited Partner, at any time or from time to time assign or transfer all or a portion of its general partner interest to an Affiliate and, in the General Partner's sole discretion, admit such assignee or transferee as an additional or substitute general partner and, if so determined by the General Partner, resign or withdraw from the Fund. Any such resignation or withdrawal shall be effective immediately after the admission of such additional or substitute general partner and such additional or substitute general partner shall continue the Fund without dissolution.

#### **5.3 General Partner as Limited Partner**

The General Partner may also be a Limited Partner to the extent that it purchases or otherwise becomes a transferee of all or any part of the Units of a Limited Partner, and to such extent shall be treated as a Limited Partner.

#### **5.4 Removal or Replacement of General Partner**

Except as otherwise provided in this Agreement, the Limited Partners shall have no right to remove or replace the General Partner or to continue the Fund upon the resignation, withdrawal, bankruptcy, insolvency or dissolution of the General Partner.

## **5.5 Dissolution of General Partner**

Notwithstanding anything else contained herein, the General Partner shall not take, or agree to take, any action (corporate or otherwise) to dissolve, liquidate, file a proposal for bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or any other legislation of any jurisdiction, wind up or make any arrangement or assignment for the benefit of creditors or appoint any trustee, receiver, receiver-manager, or sequestrator to administer its affairs unless it shall have first given 90 days' notice in writing to the Limited Partners and in such notice called a meeting of Limited Partners to be held for the purpose of appointing a new General Partner by vote of a Majority-In-Interest of the Limited Partners. Upon the appointment of such new General Partner, the former General Partner shall be deemed to have resigned as the General Partner of the Fund.

## **5.6 Powers of the General Partner**

Management, operation and policy of the Fund shall be vested exclusively in the General Partner, which shall have the power by itself and shall be authorized and empowered on behalf and in the name of the Fund to carry out any and all of the powers, objectives and purposes of the Fund and to perform all acts and enter into and perform all contracts and other undertakings and engage in all activities and transactions which it may deem necessary, desirable, advisable or incidental thereto. The Fund shall have all powers permitted under applicable laws to do any and all things deemed by the General Partner to be necessary or desirable in furtherance of the powers, objectives and purposes of the Fund. Without limiting the foregoing general powers and duties, subject to any restriction set forth herein, the General Partner is hereby authorized and empowered on behalf and in the name of the Fund to conduct the following in furtherance of the objects of the Fund:

- (a) to elect or appoint, delegate authority to, remove and terminate such agents and officers as it considers appropriate;
- (b) employ, and terminate such employment, on behalf and at the expense of the Fund, any and all other financial advisors, underwriters, lawyers, accountants, consultants, appraisers, custodians of the assets of the Fund or other agents (who may be designated as officers of the General Partner or the Fund), on such commercially reasonable terms and for such reasonable compensation as the General Partner may determine, whether or not such person may be an Affiliate of the General Partner or may also be otherwise employed by any Affiliate of the General Partner;
- (c) to purchase, sell and exercise voting or consent rights with respect to all instruments, securities and other property in which the Fund may invest, on such terms and conditions as the General Partner may determine from time to time;
- (d) to employ one or more custodians of the assets of the Fund and authorize such custodians to employ subcustodians and agents and to deposit all or any part of such assets in a system or systems for the central handling of securities or with such other person or persons as the General Partner may determine;
- (e) to invest and reinvest the assets of the Fund in arbitrage transactions within the physical electricity and electricity transmission markets, as well as short term debt



obligations, wherever such issuer or property may be located, organized or operated, whether or not publicly traded and as to marketability of the securities, interests or other property reflecting such investments;

- (f) to possess, sell, exchange, lend, pledge, mortgage, transfer, hypothecate, write options on, lease and otherwise deal in any or all of the assets of the Fund, and to purchase or sell forward contracts of physical electricity with terms ranging from one hour through to multiple years for the purposes of executing regional arbitrage strategies
- (g) to purchase or sell securities, foreign currencies, or other assets to protect or enhance the economic value of the assets of the Fund;
- (h) to vote, give assent and otherwise to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the securities or other assets of the Fund, and to execute and deliver proxies or powers of attorney to such person or persons as the General Partner shall deem proper, granting to such person or persons such power and discretion with relation to securities or other assets as the General Partner shall deem proper;
- (i) to exercise powers and rights which in any manner arise out of ownership of securities or other assets on behalf of the Fund;
- (j) to hold any security or other assets in a form not indicating any particular owner, whether in bearer, unregistered or other negotiable form, or in the name of the Fund or in the name of a custodian, subcustodian or other depository or a nominee or nominees;
- (k) to consent to, participate in or initiate any plan for the reorganization, consolidation or merger of any corporation or other issuer, any security, or other interest therein, which is held by the Fund; to consent to any contract, lease, mortgage, purchase or sale of property by such a corporation or other issuer;
- (l) to institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including claims for taxes) and litigation arising out of the conduct of the affairs of the Fund or in the enforcement of obligations due it, including all rights of appeal;
- (m) to employ or consult with such agents or independent contractors as the General Partner may deem necessary or advisable, including brokers, auditors, counsel, consultants or managers or specialists in any field of endeavour whatsoever, including such persons, firms or companies as may be Limited Partners or Affiliates of any Partner;
- (n) to determine and pay or cause to be paid out of the capital or income of the Fund, or partly out of capital and partly out of income, as the General Partner deems fair, all Fund Expenses, and such other expenses and charges as the General Partner may

deem necessary or proper to incur, and in general to make all accounting, tax and financial reporting determinations and decisions;

- (o) to make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof; and to mortgage and pledge any part of the securities and other property then owned or thereafter acquired by the Fund to secure any of or all such obligations;
- (p) to purchase and pay for such insurance, if any, as the General Partner shall deem necessary or appropriate for the conduct of the business of the Fund, including key man insurance policies naming the Fund as beneficiary and insurance policies covering any person or entity individually against all claims and liabilities of every nature arising by reason of being, or holding, having held, or having agreed to hold the office or the position of Partner, officer, employee, agent, investment advisor or manager, or independent contractor of the Fund, or being, serving, having served, or having agreed to serve at the request of the Fund as a partner, member, manager, director, trustee, officer, employee, agent or independent contractor of another fund, corporation, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted by any such person or entity in any of the foregoing capacities, including any action taken or omitted that may be determined to constitute negligence, whether or not the Fund would have the power to indemnify such person against such liability;
- (q) to make such elections, investigations, evaluations, filings and determinations on behalf of the Fund and the Limited Partners under the tax laws of Canada, any province of Canada, the United States of America, any state in the United States of America or other relevant jurisdictions as to any matter, including those matters that may, in the sole discretion of the General Partner, be necessary or desirable for the acquisition, management or disposition of assets of the Fund;
- (r) to borrow money and make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness, and secure the payment thereof by mortgage, pledge or assignment of or security interest in all or any part of the securities and other property then owned or thereafter acquired by the Fund;
- (s) to enter into, consent to and perform: (i) any cross transaction in which the General Partner acts for both the Fund and a party on the other side of the transaction, including circumstances where the General Partner acts as a broker for both the Fund and a party on the other side of the transaction, (ii) any principal transactions in which the Fund purchases property (including securities) from or sells property (including securities) to the General Partner, or (iii) any loan transactions in which the Fund borrows money from the General Partner, provided that, in any of the above circumstances, such transactions are completed on terms no less favourable to the Fund than prevailing market terms for transactions of that type;

- (t) to enter into, make and perform such other contracts, agreements and other undertakings as may be necessary, desirable, advisable or incidental to the carrying out of any of the foregoing powers, objects or purposes including without limitations:
  - (i) contracts and membership agreements with Regional Transmission Organizations;
  - (ii) Master Agreements with Counterparties and Transmission Providers;
  - (iii) The deposit of cash or security with counterparties necessary to meet credit requirements and facilitate and support transactions
- (u) to enter into agreements with any Indemnified Party providing for the indemnification by the Fund of such Indemnified Party to the extent set forth in Section 6; and
- (v) to execute all other instruments of any kind or character and to take all action of any kind or character which the General Partner may determine to be necessary, desirable or appropriate in connection with the objects of the Fund.

Each of the Limited Partners agrees that all determinations, decisions and actions made or taken by the General Partner in good faith and in accordance with this Agreement shall be conclusive and absolutely binding upon the Fund, the Limited Partners and their respective successors, permitted assigns and personal representatives.

## **5.7 Specific Authorization**

Notwithstanding any other provision of this Agreement, the Fund, and the General Partner on behalf of the Fund, may execute, deliver and perform its obligations under all documents relating to the Fund's investments, Subscription Agreements of the Limited Partners, any agreements to induce a person or entity to purchase Units, and all agreements and documents the General Partner may deem necessary, desirable, advisable or incidental thereto, and any amendments to such documents, all without any further act, vote or approval of any Partner or other person or entity. The General Partner is hereby authorized to enter into and perform on behalf of the Fund the documents described in the immediately preceding sentence, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into or execute other documents or agreements on behalf of the Fund (subject to any other restrictions expressly set forth in this Agreement).

## **5.8 Limitation on Power of Limited Partners**

The Limited Partners, in their capacity as limited partners of the Fund, shall take no part in the conduct or control of the Fund business and shall have no authority or power to act for or bind the Fund. The Limited Partners shall not hold themselves out as general partners or take any action on behalf of the Fund or in any way commit the Fund to any agreement or contract and shall have no right or authority to do any of the foregoing. Except as provided herein or as required by the Act, no Limited Partner, solely in its capacity as a limited partner, shall be liable for any debt, liability or other obligation of the Fund.

## **5.9 Tax Status of Fund**

The General Partner shall take such reasonable steps as may be necessary to ensure that, from and after the Initial Closing Date, the Fund is not and does not become a Financial Institution and shall not take any action or omit to take any action, the taking or omission of which could reasonably be expected to result in the Fund becoming a Financial Institution.

## **5.10 Taxes**

The General Partner shall prepare or cause to be prepared and shall file on or before the due date any tax returns required to be filed by the Fund. The General Partner shall cause the Fund to pay, from Fund capital, any taxes payable by the Fund.

## **5.11 General Partner to Act in Best Interest of Fund**

The General Partner will exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Fund and the Partners. Without limitation, in making and managing the assets of the Fund, the General Partner will exercise the care, diligence and skill of a prudent manager managing investments having the same risk profile as assets would exercise in similar circumstances.

## **6. EXCULPATION AND INDEMNIFICATION.**

Except to the extent otherwise required by applicable law, none of the General Partner or any director, officer, partner, shareholder, Affiliate, employee or agent of any member of the General Partner (all of the foregoing persons and entities being referred to collectively as “Indemnified Parties” and individually as an “Indemnified Party”) shall be liable to the Fund or any Partner for (i) any act or omission taken or suffered by such Indemnified Party or (ii) any losses due to the negligence of any employees, brokers or other agents of the Fund (whether or not such persons are directly employed by any Indemnified Party), unless such Indemnified Party’s act or omission has been determined, by a court having appropriate jurisdiction in a decision that is not subject to appeal, to constitute fraud, wilful misfeasance or negligence of such Indemnified Party.

To the maximum extent permitted by applicable law, each Indemnified Party shall be fully protected, indemnified and held harmless by the Fund against all liabilities, claims, damages and losses (including amounts paid in respect of judgments, fines, penalties or settlement of litigation, and legal fees and expenses reasonably incurred in connection with any pending or threatened litigation or proceeding) arising out of, related to or in connection with the Fund’s business or affairs, unless the act or omission giving rise to the claim for indemnification has been determined, by a court having appropriate jurisdiction in a decision that is not subject to appeal, to have been caused by such Indemnified Party’s fraud, wilful misfeasance, negligence or the knowing material violation of applicable laws, material breach of this Agreement, any fiduciary duty owed to the Fund by this Agreement, or any fiduciary duty owed to the Fund by the Indemnified Party. No Indemnified Party shall be entitled to indemnification by the Fund to the extent that such loss arises in respect of any economic losses incurred by any Indemnified Party as a result of the ownership of Units in the Fund or the ownership of an interest in any assets, or in respect of any expenses of the Fund that the Indemnified Party has agreed to bear. The Fund may advance expenses, including

legal fees and disbursements, for which any Indemnified Party would be entitled by this Agreement to be indemnified upon receipt of an unsecured undertaking by such Indemnified Party to repay such advances if it is ultimately determined, by a court having appropriate jurisdiction in a decision that is not subject to appeal, that indemnification for such expenses is not permitted by law or authorized by this Agreement. Each Indemnified Party may consult with outside legal counsel selected by the Fund, and any action or omission taken or suffered in reliance and in accordance with the opinion or advice of such counsel shall be conclusively presumed for purposes of this Agreement not to have constituted fraud, wilful misfeasance or negligence. Unless there is a specific finding of fraud, wilful misfeasance or negligence (or where such a finding is an essential element of a judgment or order), the termination of any action, suit or proceeding by judgment, order or settlement, shall not, of itself, be deemed to constitute for the purposes of this Section 6 a determination that the Indemnified Party in question acted negligently or engaged in fraud or wilful misfeasance. A person or entity shall continue to be exculpated and shall remain entitled to the indemnification provided in this Section 6 following the termination of any capacity in which such person or entity serves as an Indemnified Party with respect to any act or omission suffered or taken while serving in such capacity.

The amount of any indemnification to which an Indemnified Party is entitled under this Section 6 in respect of any matter, transaction or state of affairs shall be reduced by the amount of any insurance proceeds actually received and entitled to be retained by such Indemnified Party and by the amount of any indemnification payment from any issuer of securities owned by the Fund actually received and entitled to be retained by such Indemnified Party, in each case to the extent such proceeds or payment are on account of the same matter, transaction or state of affairs.

Each Indemnified Party, if otherwise entitled to indemnification from the Fund hereunder, shall use reasonable efforts to seek indemnification from other available third party sources other than the General Partner or any Limited Partner (including under any insurance policies by which such person is covered) and shall account to the Fund for any amounts received by it from such sources. If such Indemnified Party is a person other than the General Partner, it shall obtain the written consent of the General Partner prior to entering into any compromise or settlement in respect of such claim that would result in an obligation of the Fund to indemnify such Indemnitee.

If liabilities arise out of the conduct of the business and affairs of the Fund and of any other person for which the Indemnified Party entitled to indemnification from the Fund hereunder was then acting in a similar capacity, the amount of the indemnification provided by the Fund shall be limited to the Fund's proportionate share thereof as determined in good faith by the General Partner in light of its fiduciary duties to the Fund.

To the maximum extent permitted by applicable law, any act or omission taken or suffered by an Indemnified Party regarding any matter which this Agreement provides is in such Indemnified Party's discretion or sole discretion shall be conclusively deemed not to constitute fraud, wilful misfeasance or negligence.

To the extent that, at law or in equity, an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Fund or to the Partners, the General Partner and any other Indemnified Party acting in connection with the Fund's business or affairs under this

Agreement shall not be liable to the Fund or to any Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, including this Section 6, to the extent that they restrict the duties and liabilities of an Indemnified Party otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of such Indemnified Party.

Promptly after becoming aware of any matter that may give rise to a claim for indemnification hereunder, the General Partner will provide to the Limited Partners written notice of such matter specifying (to the extent that information is available) the factual basis for any claim and the amount of such claim (or if an amount is not then determinable, an estimate of the amount of the claim, if an estimate is feasible in the circumstances). The General Partner will keep the Limited Partners informed of the status of any claims on a regular basis.

The General Partner shall hold the benefit of this Section for its own benefit and for the benefit of the Indemnified Parties.

The indemnification obligations set forth in this Section 6 shall survive the termination of this Agreement and the dissolution and winding-up of the Fund. The provisions of this Section 6 shall enure to the benefit of the successors, permitted assigns, heirs and personal representatives of the Indemnified Parties.

## **7. FEES AND EXPENSES.**

### **7.1 General Partner Distribution**

The Fund shall distribute to the General Partner monthly in arrears, commencing on June 12, 2006 and continuing until the termination of the Fund, an annual amount (the "GP Distribution"), equal to 2% of the Net Asset Value for carrying out its duties and performing activities under this Agreement in its capacity as a general partner of the Partnership.

### **7.2 Performance Fee**

The General Partner will be paid on the last business day of each calendar quarter an amount equal to 20% of the Fund's net profit in such quarter ("Net Profit"). Net Profit shall be an amount equal to the Fund's realized and unrealized gains and investment income net of realized and unrealized depreciation, investment loss and allocated expenses. No Performance Fee will be payable for any period unless the positive balance in Fund's cumulative loss account from prior periods (if any) has been reduced to zero by such period's Net Profit.

### **7.3 Organizational Expenses**

The Fund shall pay the General Partner monthly in 60 equivalent payments an amount equal to the aggregate Organizational Expenses.

#### **7.4 Fund Expenses**

The Fund shall pay or, if paid by the General Partner, reimburse the General Partner for all costs and expenses (“Fund Expenses”) associated with the Fund’s activities, investments and business including: (i) all travel, printing, legal, accounting, marketing and other expenses incurred by the Fund or the General Partner in connection with the start up and organization of the Fund and the offering and sale of Units (the “Organizational Expenses”), (ii) all reasonable due diligence, legal, accounting, letter of credit, receivables financing, consulting, valuation and research expenses, regulatory and membership fees, and other out-of-pocket costs relating to the Fund’s activities, investments or business and filing and similar fees paid on behalf of the Fund, including such expenses with respect to transactions that are not consummated to the extent that such expenses are not reimbursed by entities in which the Fund invests or proposes to invest, (iii) all custody, transfer, registration and similar expenses incurred by the Fund and all brokerage fees and commissions and discounts incurred by the Fund in connection with the purchase or sale of securities and physical electricity contracts, (iv) all interest on funds borrowed by the Fund (if any), (v) subject to Section 3, all taxes (if any) required to be paid or withheld by the Fund, (vi) subject to Section 6 in the case of payments to Indemnified Parties, all extraordinary expenses, such as litigation and indemnification costs and expenses, judgments and settlements, (vii) all premiums and other reasonable costs relating to indemnity or insurance policies maintained by the Fund or the General Partner for the benefit of the General Partner and any director, officer, partner, shareholder, Affiliate, employee or agent of the General Partner, and (viii) all expenses incurred by the Fund related to derivative investments and other currency hedges.

#### **8. OTHER ACTIVITIES.**

Except as otherwise specifically provided herein, the General Partner and its officers and directors are and may be affiliated with other persons, firms and corporations and the General Partner and its officers and directors may have business interests and engage in business activities in addition to those connected with the Fund, which interests and activities may be similar to or different from those of the Fund and may include acquiring interests as a partner, a member, a shareholder or otherwise in other entities, or performing investment advisory services and management services for various clients and accounts other than the Fund.

The General Partner and its officers and directors shall devote such of their time to the affairs of the Fund as the conduct of the Fund’s business shall reasonably require, as determined by the General Partner in its sole discretion, and none of such members shall be obligated to do or perform any act or thing in connection with the business of the Fund not expressly set forth herein. Nothing in this Agreement shall preclude the General Partner or any director, officer, partner, shareholder, Affiliate, employee or agent of any member of the General Partner (each of the foregoing in its capacity as such, a “Related Party”) from exercising investment responsibility for, or from otherwise engaging in, directly or indirectly, any other business, regardless of whether any such business is similar to, or identical with, the business of the Fund or shall otherwise involve purchasing, selling, holding or otherwise dealing with investments. Nothing herein contained shall preclude any Related Party from directly or indirectly purchasing, selling, holding or otherwise dealing with any investment for the account of any such other business, for its own account, for any family member or

for other clients, irrespective of whether any such investments are purchased, sold, held or otherwise dealt with for the account of the Fund.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Related Party (other than the General Partner) be considered a general partner or limited partner of the Fund by agreement, estoppel, as a result of the performance of its duties, or otherwise, unless such Related Party has been admitted as a Limited Partner or as a General Partner hereunder.

## **9. ADMISSION AND WITHDRAWAL OF LIMITED PARTNERS.**

### **9.1 Who May Not Subscribe**

No Unit may be subscribed for by or on behalf of or registered in the name of any person or entity that:

- (a) is not resident in Canada for purposes of the Tax Act or, if such entity is a partnership, is not a Canadian partnership within the meaning of the Tax Act (a “Canadian Resident Person”);
- (b) is a Financial Institution such that, following the issue of Units to such person or entity, the Fund would be a Financial Institution; or
- (c) is a “tax shelter” as defined in subsection 237.1(1) of the Tax Act or which is, or an interest in which is, a “tax shelter investment” within the meaning of Section 143.2 of the Tax Act.

### **9.2 Admission**

A person or entity may subscribe for Units by delivering to the General Partner a completed and executed Subscription Agreement in form satisfactory to the General Partner and such other documents or instruments as may be requested by the General Partner. The General Partner shall have the right to accept or reject a Subscription Agreement in whole or in part. Upon acceptance by the General Partner of any Subscription Agreement, in whole or in part, all Partners shall be deemed to consent to the admission of the subscriber as a Limited Partner and the Fund may issue Units to such subscriber. The General Partner shall also cause the Register to be amended and shall file with appropriate authorities all such other documents as may be required by the Act or under any other applicable legislation in other relevant provinces and shall cause the admission of the new Limited Partner to be reflected in all other relevant Fund books and records.

### **9.3 Additional Subscriptions and Admission of Additional Limited Partners**

A person or entity may subscribe monthly for Units on any Valuation Date at the then Net Asset Value per Unit and, upon acceptance of any Subscription Agreement for such Units by the General Partner, the General Partner shall amend the Register accordingly. In accepting additional Units or admitting additional Limited Partners, the Fund shall not be obligated to offer first to the existing Partners the right to purchase additional Units.



#### **9.4 Additional Limited Partners**

Except for Limited Partners admitted in accordance with Section 11, additional Limited Partners may be admitted only in accordance with Sections 2.9 and 9.3.

#### **9.5 Required Withdrawal by Limited Partners**

The General Partner may terminate any Limited Partner's interest in whole or in part at any time upon at least five days' prior written notice if the General Partner determines that the continued participation of the Limited Partner in the Fund might materially adversely affect the Fund, including by involving the Fund or any Partner in any litigation arising out of, or relating to, the participation of such Limited Partner in the Fund, causing the Fund to cease being a Canadian partnership within the meaning of the Tax Act, causing adverse tax consequences or requiring the Fund, the General Partner or any of their respective Affiliates to register under relevant legislation or become subject to any increased regulatory burden, causing the Fund to be an investment company under applicable law, or causing the assets of the Fund to be treated as "plan assets" for purposes of the United States *Employee Retirement Income Security Act of 1974*, as amended, and the rules and regulations thereunder. In the event of termination by the General Partner of a Limited Partner's interest pursuant to this Section 9.5, the General Partner shall cause such Limited Partner to be paid in cash, as per Section 2.12(b)). The Units held or formerly held by such terminated Limited Partner shall not be included in calculating the Units of the Limited Partners required to take any action under this Agreement after the applicable Termination Date. Upon the termination of the entirety of a Limited Partner's interest, such Limited Partner shall cease to be a limited partner of the Fund. The provisions of this Section 9.5 shall not limit the rights of the Fund or the General Partner set forth elsewhere in this Agreement.

#### **9.6 Tax Status of Limited Partners**

Each Limited Partner covenants and agrees to promptly provide evidence to the General Partner upon request of such Limited Partner's status under the Tax Act or any similar statute affecting the status of the Fund or of any other matter which affects or may from time to time affect such status. Each Limited Partner acknowledges and agrees that the General Partner may require any Limited Partner that ceases to be a Canadian Resident Person to sell its Units to one or more persons or entities that are Canadian Resident Persons if absent such sale or sales the Fund would cease to be a Canadian partnership within the meaning of the Tax Act; provided, however, that the General Partner may not require such a sale in order to admit a new Limited Partner pursuant to Section 9.3. Each Limited Partner acknowledges and agrees that the General Partner may require any Limited Partner that is a Financial Institution to sell its Units to one or more persons or entities that are not Financial Institutions if absent such sale the Fund would be a Financial Institution; provided, however, that the General Partner may not require such a sale in order to admit a new Limited Partner pursuant to Section 9.3 and, provided further, that if there is more than one Limited Partner that is a Financial Institution, (i) the order in which Units held by Limited Partners who are Financial Institutions (whether by reason of a Transfer of Units to a Financial Institution or because a Limited Partner that was not previously a Financial Institution shall become a Financial Institution) shall be required to be sold pursuant to this sentence shall be inverse to the length of the period of time that the Unit has been held by a Limited Partner that is a Financial Institution (with the Units so

held for the shortest period of time being required to be sold first) and (ii) where two or more Limited Partners who are Financial Institutions have held such Units for the same period of time, each such Limited Partner shall be required to sell such number of Units as is proportional to the number of such Units held by each of them, respectively. In the event that a Limited Partner fails to comply with either such request, the General Partner shall have the right to sell such Limited Partner's Units or to purchase the same on behalf of the Fund at fair value as determined by a valuation made by the General Partner, which determination will be final and binding and not subject to review or appeal.

## **10. AMENDMENTS.**

The General Partner may, without the necessity of the consent of any of the Limited Partners, make technical, regulatory and other amendments to this Agreement that do not materially adversely affect any Limited Partner, as determined by the General Partner in its sole discretion. Any provision of this Agreement may be amended from time to time with the consent of the General Partner and a Majority-In-Interest of the Limited Partners; provided, however, that except as provided elsewhere in this Agreement, no amendment may be made without the consent of each affected Limited Partner if such amendment would have the effect of (i) increasing a Limited Partner's liability or obligations, (ii) reducing disproportionately a Limited Partner's right to distributions, or (iii) amending this Section 10. Where a provision of this Agreement requires that a consent, vote or approval of Limited Partners be obtained with a requisite percentage in favour, no amendment may be made to such provision without obtaining the requisite percentage approval of Limited Partners to such amendment. The General Partner shall deliver a copy of each amendment to this Agreement to each Limited Partner, other than amendments not requiring the consent of such Limited Partner, promptly following its effectiveness. For all purposes of the Act and this Agreement, the Limited Partners shall constitute a single class or group of Limited Partners, and whenever a vote of the Limited Partners is required or permitted by either the Act or this Agreement, the Limited Partners shall vote as a single class or group.

## **11. ASSIGNMENT AND TRANSFER.**

### **11.1 Assignment and Transfer**

Except as contemplated elsewhere in this Agreement, a Limited Partner's Units may not be sold, assigned, encumbered, pledged, hypothecated, mortgaged, exchanged, given away, or in any other way disposed of or transferred, in whole or in part, voluntarily or involuntarily, by operation of law, pursuant to judicial process or otherwise (a "Transfer") except that a Limited Partner's Units (or a portion thereof) (i) may be transferred with the prior written consent of the General Partner, which may be withheld in the sole discretion of the General Partner, provided, however, that in the case of a proposed transfer to a Family Member, to trusts exclusively for the benefit of one or more Family Members or to an entity owned exclusively for the benefit of one or more Family Members, the consent of the General Partner shall not be unreasonably withheld if the transferor remains unconditionally liable for the transferee's Units and other obligations and (ii) may be sold by the General Partner pursuant to Section 9.6. Each Limited Partner hereby severally agrees that it will not Transfer or attempt to Transfer all or any portion of its Units except as permitted by this Agreement and by applicable law, including securities laws. Any attempted Transfer of a Partner's

Units not made in accordance with the provisions of this Section 11 shall be null and void and of no force and effect. Where a person becomes entitled to a Unit on the incapacity, death, bankruptcy, insolvency or dissolution of a Limited Partner, or otherwise by operation of law, in addition to the requirements of this Section 11.1, such entitlement shall not be recognized or entered in the Register evidencing ownership of the Units until that person (i) has produced evidence satisfactory to the General Partner of such entitlement and (ii) has acknowledged in writing that such person is bound by the terms of this Agreement.

### **11.2 Other Restrictions on Transfer**

Subject to Section 11.1, no Unit may be transferred except in the sole discretion of the General Partner and otherwise in accordance with the following provisions:

- (a) the Limited Partner shall notify the General Partner of the identity of the transferee and shall provide the General Partner with such other information relating to the Transfer as the General Partner may reasonably request;
- (b) the Transfer shall be effective and the transferee shall become a Limited Partner on the later of (i) the day on which the transfer form, duly completed and executed by the transferor and transferee, is accepted by the General Partner and (ii) the day that the Register of Limited Partners of the Fund maintained by the General Partner pursuant to the Act and the provisions hereof is updated by the General Partner to show the transferee as a Limited Partner;
- (c) the General Partner shall deny the Transfer of Units to a person that is not a Canadian Resident Person;
- (d) the General Partner shall deny the Transfer of Units to a person or entity that is a Financial Institution if, following such transfer, the Fund would be a Financial Institution;
- (e) the General Partner may deny any Transfer of Units if the General Partner has reason to believe that the Transfer is not being made in compliance with applicable securities laws; and
- (f) the General Partner shall deny the Transfer of Units to a person that is a “tax shelter” within the meaning of Section 237.1(1) of the Tax Act or which is, or an interest in which is, a “tax shelter investment” within the meaning of Section 143.2 of the Tax Act.

### **11.3 Expenses of Transfer**

Each Limited Partner hereby agrees that it will pay or cause to be paid all expenses, including legal fees, incurred by the Fund or the General Partner in connection with any attempted or realized Transfer of all or any portion of its Units.

#### **11.4 Indemnification by Transferor**

In the event that the Fund or the General Partner becomes involved in any capacity in any action, proceeding, or investigation brought by or against any person (including any Limited Partner) in connection with any Transfer or attempted Transfer by a Limited Partner of a Limited Partner's Units or the admission or attempted admission into the Fund as a Limited Partner of any purchaser, assignee, transferee, donee, heir, legatee, distributee or other recipient (each an "Assignee") of such transferring Limited Partner's Units, the Limited Partner who has transferred (or attempted to transfer) all or any portion of its Units will periodically reimburse (on dates to be determined by the General Partner in its sole discretion) each of the Fund and the General Partner for each of their legal and other expenses (including the cost of any investigation and preparation) incurred in connection with such action, proceeding or investigation. To the fullest extent permitted by law, the transferring Limited Partner also will indemnify the Fund and the General Partner for any losses (including legal fees and disbursements), claims, damages or liabilities to which any of them may become subject in connection with such Transfer or attempted Transfer. The reimbursement and indemnity obligations of the transferring Limited Partner under this Section 11.4 shall be in addition to any liability that the transferring Limited Partner may otherwise have, shall extend upon the same terms and conditions to any director, officer, partner, shareholder, Affiliate, employee or agent of the Fund and the General Partner, and shall be binding upon and enure to the benefit of any successors, permitted assigns, heirs, and personal representatives of the Fund and the General Partner and any such persons. The foregoing provisions shall survive any termination of this Agreement.

#### **11.5 Recognition of Transfer**

The Fund shall not recognize for any purpose any purported Transfer of all or any portion of the Units of a Limited Partner unless (i) the provisions of this Section 11 shall have been complied with, and (ii) the General Partner shall have received such instruments, in form and substance satisfactory to the General Partner, containing such representations, warranties and agreements as the General Partner may deem necessary or appropriate, and which shall also contain the acceptance by the Assignee of all the terms and provisions of this Agreement and the Assignee's agreement to be bound thereby. The General Partner may, but is not obligated to, also require as a condition to any Transfer an opinion of counsel acceptable to the General Partner (who may be counsel to the Fund) satisfactory in form and substance to the General Partner covering such matters as the General Partner shall request.

#### **11.6 Status of Transferor**

Any Limited Partner which shall Transfer all of its interest shall cease to be a Limited Partner at such time as the Assignee of such Units is admitted as a Limited Partner. Notwithstanding anything herein to the contrary, both the Fund and the General Partner shall be entitled (but are not required) to treat the transferring Limited Partner of Units as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to it, until such time as the Transfer is completed and the Assignee is admitted as a Limited Partner.

### **11.7 Conditions of Admission**

Each Assignee, as a condition to its admission as a Limited Partner, shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner reasonably deems necessary or appropriate to effectuate such admission.

### **11.8 Rights Prior to Admission**

Unless and until admitted as a Limited Partner pursuant to and in accordance with this Section 11, any Assignee shall not be entitled to any rights in the Fund or be recognized as a Limited Partner for any purpose and, in particular, shall not be entitled to vote or give consents with respect to such Units.

### **11.9 Transfers During a Fiscal Year**

In the event of the Transfer of a Limited Partner's Units at any time other than the end of the Fund's fiscal year, the distributive shares of the various items of Fund income, gain, loss and expense as computed for tax purposes shall be allocated proportionately between the transferor and the transferee based upon the number of days in the Fund's fiscal year that the transferor and transferee were recognized as Limited Partners on the books and records of the Fund, respectively.

### **11.10 Residency and Tax Status of Transferees**

Each Limited Partner covenants and agrees that such Limited Partner will not Transfer or purport to Transfer such Limited Partner's Units (i) to any person that is not a Canadian Resident Person or (ii) if such Transfer or purported Transfer would have the effect of altering the status of the Fund in relation to the Tax Act or any similar statute affecting such status (and the Fund shall not issue Units to any person after the Initial Closing that would have the effect of altering the status of the Fund in relation to the Tax Act or any similar statute affecting such status). Immediately prior to any purported Transfer of any Units in contravention of the preceding sentence, such Units shall be deemed to have been redeemed for a redemption price per Unit equal to the lower of cost and 75% of the then fair market value of such Units determined on the basis of a valuation made by the General Partner, which determination shall be final and binding on the Limited Partner, with the costs of such valuation to be funded by the Limited Partner who sought to effect such purported Transfer.

## **12. REPORTS, ETC.**

### **12.1 Fiscal Year and Records**

The fiscal year and, except as otherwise required by applicable law, the taxable year of the Fund shall be the calendar year. The General Partner shall keep or cause to be kept complete and accurate books and records reflecting all activities of the Fund and shall retain such books and records as are in existence at the termination of the Fund for a period of three years thereafter. Unless otherwise determined by the General Partner at its sole discretion, the method of accounting of the Fund shall be on an accrual basis and in accordance with generally accepted accounting principles and all financial statements (and calculations, to the extent that generally accepted accounting principles are applicable to such calculations) prepared pursuant to the terms of this

Agreement shall, unless otherwise expressly provided, be prepared or calculated in accordance with generally accepted accounting principles. The General Partner shall keep a record of Limited Partners, including a list of the names and addresses of all the Limited Partners and the number of Units held by each of them (the “Register”), in accordance with the provisions of the Act.

## **12.2 Reports**

After the end of each fiscal year, the General Partner shall cause an audit of the Fund’s financial statements for such year to be made by a firm of internationally recognized independent public accountants selected by the General Partner. The General Partner shall use its reasonable best efforts to cause a copy of such audited financial statements to be delivered to each of the Limited Partners as soon as is reasonably practicable after the end of the Fund’s fiscal year. The General Partner shall also prepare or cause to be prepared a monthly statement and summary comments and shall use its reasonable efforts to cause a copy of such summary information to be delivered to each of the Limited Partners within 10 days after the relevant Valuation Date. Any financial statements or other reports prepared or caused to be prepared pursuant to this Section 12.2 need not include the name or complete identification of each investment. The General Partner shall prepare or have prepared the appropriate income tax reports or returns of the Fund based on the information available to it and to furnish the appropriate information to each Limited Partner, in each case as soon as is reasonably practicable after the end of the Fund’s fiscal year.

## **12.3 Right to Withhold Information**

Notwithstanding any other provision of this Agreement, with the exception of information provided pursuant to Section 12.2 relating to information necessary to prepare tax returns, the General Partner shall have the right not to provide the Limited Partners, for such period of time as the General Partner in good faith determines to be advisable, with any information with respect to the Fund, any portfolio assets or any of their respective Affiliates that the Limited Partners would otherwise be entitled to receive or to have access to pursuant to this Agreement if: (i) such information is reasonably determined by the General Partner to be in the nature of trade secrets, (ii) the Fund or the General Partner (or any of their respective directors, members, partners, shareholders or employees) is required by law or by agreement with a third party to keep such information confidential, or (iii) the General Partner in good faith determines that the disclosure of such information to the Limited Partners is not in the best interest of the Fund or could damage the Fund, any portfolio assets or the conduct of any of their respective affairs. It is understood that the General Partner may elect to exercise its right to withhold information pursuant to this Section on a Limited Partner by Limited Partner basis, including, without limitation, the exercise of such right with respect to any Limited Partner that is subject to any “freedom of information”, “sunshine” or other law, rule or regulation that imposes upon such Limited Partner an obligation to make certain information available to the public. If, pursuant to the foregoing sentence, the General Partner does not provide an individual Limited Partner with certain information, then the General Partner shall promptly provide such Limited Partner with notice of such action.

## **12.4 Right of Inspection**

Subject to the terms of Section 16.9 of this Agreement, the Limited Partners shall have the right, at their respective sole expense, to inspect the books and records of the Fund, including the

Register maintained pursuant to Section 12.1, to the extent provided by the Act during regular business hours at the offices of the General Partner on not less than 10 Business Days' prior written notice. Limited Partners, however, will not have access to any information of the Fund contained in its books and records (other than the Register) which the General Partner is required by legal or contractual restriction to keep confidential or which, in the opinion of the General Partner, acting reasonably, should be kept confidential in the interests of the Fund.

### **13. POWER OF ATTORNEY.**

#### **13.1 Power of Attorney**

By signing this Agreement, each Limited Partner irrevocably designates and appoints the General Partner and any successor to the General Partner under this Agreement, as its joint and several true and lawful attorney and agent, with full power of substitution and authority in the name, place and stead of such Limited Partner to make, execute, sign and file (i) such instruments, documents, consents, waivers, approvals or statements, that may from time to time be required of the Fund, by this Agreement or by the laws of the Province of Ontario or any other Canadian province (and the federal laws of Canada applicable therein), and the laws of the United States of America or any State thereof that the General Partner considers necessary or desirable to carry out the purposes of this Agreement and the business of the Fund, and to sell such Partner's Units pursuant to Section 5.6, 9.5 or 9.6, or (ii) such elections, evaluations, filings and determinations contemplated by Section 5.6(q); provided, however, that when required by any provision of this Agreement which establishes that consent or approval of Limited Partners is required to take any action, the power of attorney made in this Section 13 shall be exercised only after the necessary consent or approval by the Limited Partners is obtained. Each such attorney is not hereby granted any authority on behalf of the Limited Partners to amend this Agreement except that as attorney for the Limited Partners, the General Partner shall have the authority (without action or consent of the Limited Partners) to amend this Agreement as may be required to effect:

- (a) the issuance of Additional Units;
- (b) Transfers of Units pursuant to Section 11;
- (c) withdrawal of Partners pursuant to Section 9;
- (d) amendment of this Agreement pursuant to the first sentence of Section 10; or
- (e) amendment of this Agreement pursuant to Section 10 if the General Partner has received the consent required by Section 10.

#### **13.2 Binding of Limited Partners**

Each Limited Partner will be bound by any representation or action made or taken by the General Partner pursuant to the power of attorney in this Section 13 and waives any and all defences which may be available to contest, negate or disaffirm any action of the General Partner taken in good faith under such power of attorney.

### **13.3 Power of Attorney Irrevocable**

The foregoing power of attorney is coupled with an interest, is irrevocable, and shall continue in full force and effect notwithstanding the Transfer of any Partner's Units and shall survive and not be affected by the subsequent death, disability, incapacity, insolvency, bankruptcy or dissolution of any Partner. The granting of these powers of attorney shall not terminate any continuing power of attorney previously granted by the Limited Partner and shall not be terminated by the Limited Partner on the execution of a continuing power of attorney in the future, and the Limited Partner hereby agrees not to take any action in the future which results in the termination of any of these powers of attorney. These powers of attorney shall survive any dissolution or termination of the Fund.

### **13.4 Execution of Documents on Behalf of Limited Partner**

The General Partner shall have the power to execute documents in the name of all of the Limited Partners pursuant to this power of attorney by affixing its signature thereto with the indication that it is acting on behalf of the Limited Partners.

### **13.5 Compliance by Limited Partners**

Each Limited Partner will, on request by the General Partner, immediately execute every certificate or other instrument necessary to comply with any law or regulation of any jurisdiction for the continuation and good standing of the Fund or to otherwise carry out the provisions of this Agreement.

## **14. VALUATION.**

- (a) The value of any asset of the Fund shall be determined in good faith in the sole discretion of the General Partner. The value of an asset shall be the market value thereof if market quotations are readily available and are, in the judgment of the General Partner, appropriate, taking into account the size and nature of the asset and the rights and restrictions that pertain to the asset. If market values are not readily available or, in the judgment of the General Partner, do not accurately reflect the value of the asset, the General Partner may determine the value of the asset in its reasonable judgment based upon all available relevant information. The General Partner shall be entitled to rely upon any valuations provided to it, but shall not be bound by such valuations. In determining the value of the assets of the Fund or the interest of any Partner in the Fund, or in any accounting among the Partners or any of them, no value shall be placed on the goodwill or name of the Fund. The value of an asset of the Fund as determined by the General Partner in accordance with this Section 14 shall be final and binding on all Limited Partners. The Fund's assets shall be valued monthly and at such other times as are provided or required in this Agreement or determined by the General Partner.
- (b) Upon the termination of the Fund, if it is proposed by the General Partner to distribute some or all of the assets of the Fund in-kind and Limited Partners by Special Resolution object to the valuation placed upon certain of the assets proposed



to be distributed in-kind, the General Partner shall submit such valuation to an independent investment bank, national accounting firm or other third party valuator as agreed to by the General Partner and a Majority-In-Interest of the Limited Partners. If the General Partner and a Majority-In-Interest of the Limited Partners cannot agree upon an independent third party valuator within 90 days of such Special Resolution, such valuation shall be submitted to arbitration pursuant to the *Arbitration Act, 1991* (Ontario).

- (c) The following rules are currently applied by the General Partner to determine the Net Asset Value on the last business day of each month:
- (i) Confirmation and calculation of the total cash held at all Fund accounts with financial institutions, including prudential deposits,
  - (ii) Confirmation and calculation of the total drawn letters and lines of credit or loans outstanding,
  - (iii) Confirmation and calculation of the market value of all securities held at all Fund accounts with financial institutions,
  - (iv) Confirmation and calculation of all net receivables and net payables with trade counterparties up to a 12:00 midnight cut off time for trades on the day of valuation,
  - (v) An approximation of all unbilled transaction related costs including but not limited to transmission losses, FERC fees, uplift charges, congestion charges, ancillary services costs, and other Power Pool services and operating charges,
  - (vi) An approximation of all pro rata membership and licensing costs including but not limited to Power Pool membership fees and scheduling software vendor fees,
  - (vii) An approximation of all relevant taxes including but not limited to GST on purchases of electricity in Canada,
  - (viii) An approximation of all fund related expenses including and not limited to General Partner disbursements,
  - (ix) If in the view of the General Partner, the public price of an asset or obligation does not fairly reflect the value of the asset, the General Partner may instead value the asset or obligation at fair value substantiated by an independent third party source,
  - (x) A deduction shall be made, on an accrual basis, of all expenses or liabilities of the Fund determined in accordance with generally accepted accounting principles, including but not limited to: accounting fees, legal fees, data feeds, trading platform fees, fees and expenses payable to the General

Partner, custodians, registrars and transfer agents, and other persons with whom the General Partner has contracted or who have been retained by or on behalf of the Fund for the provision of services thereto; interest expense and any other costs or changes related to any borrowings; and all such other fees and expenses incurred in the business and operations of the Fund.

- (xi) All assets and liabilities initially expressed in currencies other than the Canadian dollar, will be converted into Canadian dollars using foreign exchange rates provided by Bloomberg L.P. at 12:00 midnight on the day of valuation.

## **15. FUND MEETINGS**

### **15.1 Request for Meeting by Limited Partner**

The General Partner may at any time and shall, upon the written request of the Limited Partners representing 30% or more of the Units requesting a meeting, for any purpose, and stating such purpose for which the meeting is to be held, call a meeting. If the General Partner fails or neglects to call such a meeting within 15 days after receipt of the written request, any Limited Partner who was a party to the request may call the meeting. Meetings of Limited Partners are to be held at such place as the General Partner may designate or, in the event of a meeting called by a Limited Partner in the aforesaid circumstances, at such place in the City of Toronto as the said Limited Partner may designate.

### **15.2 Notice of Meeting**

Notice of any Partners' meeting shall be given to each Limited Partner and to the General Partner. The notice shall be given in the manner contemplated by Section 16.5 such that it is received or deemed to have been received not less than 10 Business Days and not more than 30 Business Days prior to the meeting and shall specify the time and place of the meeting and, in reasonable detail, the nature of all business to be transacted. Notice for adjourned or postponed meetings shall be mailed not less than five Business Days in advance of the date of the adjourned or postponed meeting and otherwise in accordance with the provisions of notice contained in this Section 15.2, except that it need not specify the nature of the business to be transacted. Accidental failure to give notice to any Partner shall not invalidate a meeting or proceedings thereat.

### **15.3 Chairman**

The chairman (the "Chairman") of all meetings will be chosen by the General Partner unless a Majority-In-Interest of the Limited Partners present in person or represented by proxy at the meeting choose, by resolution, some other person present to be Chairman.

### **15.4 Quorum**

Subject to the final sentence of this Section 15.4, two or more Limited Partners present in person and representing at least 30% of the Units shall constitute a quorum at any meeting of the Partners, except for the purpose of passing an Extraordinary Resolution, a Special Resolution or a

resolution of the Limited Partners to appoint a replacement General Partner pursuant to Section 5.5, in which case two or more Limited Partners present in person and representing at least 50% of the Units shall constitute a quorum. If a quorum is not present for a meeting of Partners within 30 minutes after the time fixed for holding the meeting, the meeting, if convened pursuant to a written request of Limited Partners, will be cancelled, but otherwise will be adjourned to such date not less than five nor more than 21 days after the original date for the meeting as is determined by the General Partner at a time and location determined by the General Partner. The Limited Partners present at any such adjourned meeting shall constitute a quorum.

### **15.5 Voting**

At a meeting of Partners, each Limited Partner shall be entitled to one vote for each Unit held. The Chairman shall not have a casting vote. Every question submitted to a meeting shall be decided by a poll. At any meeting of the Partners the result of a poll taken shall be deemed to be the decision of the meeting on the question or resolution in respect of which the poll was taken.

### **15.6 Proxies**

At any meeting of Partners, any Limited Partner entitled to vote may vote by proxy in a form acceptable to the General Partner, provided the proxy shall have been received by the General Partner for verification prior to the meeting. Any individual may be appointed as proxy and every instrument of proxy shall be considered valid unless it is dated more than one year before the date of the meeting or is challenged by a Partner or holder of another proxy prior to or at the time of its exercise. The Chairman shall determine the validity of any challenged instrument of proxy.

### **15.7 Validity of Proxy Vote**

A vote cast in accordance with the terms of an instrument of proxy shall be valid notwithstanding the subsequent death, incapacity, insolvency, bankruptcy or insanity of the Limited Partner giving the proxy or the revocation of the proxy, provided that no written notice of such death, incapacity, insolvency, bankruptcy, insanity or revocation shall have been received by the General Partner prior to the time fixed for the holding of the meeting. A Partner which is a corporation or institution may appoint an officer, director or other authorized individual as its representative to attend, vote and act on its behalf at meetings of Partners, and may by a like instrument revoke any such appointment, and for all purpose of meetings of Partners, other than the giving of notice, an individual so appointed will be deemed to be the holder of every Unit held by the corporation or institution he or she represents.

### **15.8 Minutes of Meeting**

Minutes and proceedings of every meeting of the Partners shall be made and recorded by the General Partner. Minutes, when signed by the Chairman of the meeting, shall be *prima facie* evidence of the matters therein stated. All such minutes shall be kept in the books and records of the Fund. Until the contrary is proved, every meeting in respect of which minutes have been made shall be taken to have been duly held and convened and all proceedings referred to in the minutes shall be deemed to have been duly passed or not to have been passed, as the case may be.

## **15.9 Resolutions Binding**

Any Extraordinary Resolution, Special Resolution or resolution of a Majority-In-Interest of the Limited Partners shall be binding on all Partners and their respective heirs, executors, administrators or other legal representatives, successors and assigns, whether or not such Partner was present or represented by proxy at the meeting at which such resolution was passed and whether or not such person voted against such resolution.

## **15.10 Electronic Communication**

- (a) Any person entitled to attend a meeting of Partners or Limited Partners may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the General Partner makes available such communication facility. A person participating in a meeting by such means is deemed for purposes of this Agreement to be present at the meeting.
- (b) Any vote referred to in this Agreement may be held entirely by means of a telephonic, electronic or other communication facility if the General Partner makes available such communication facility.
- (c) Any person participating in a meeting contemplated by this Agreement may vote by means of the telephonic, electronic or other communication facility that the General Partner has made available for that purpose.

## **16. MISCELLANEOUS.**

### **16.1 Firm Name**

The Fund shall have the full and exclusive ownership of and right to use the Fund name, Aquilon Power Silverhill Fund L.P., and any other name selected by the General Partner pursuant to Section 1.2. At no time during the existence of the Fund, as between the Partners, shall any value be placed upon the firm name, or the right to its use, or any goodwill attached thereto or otherwise associated with the Fund. In connection with the winding-up of the Fund, to the extent permitted by applicable law, the entire right, title and interest to the firm name and such goodwill shall be assigned without compensation to Silverhill Ltd.

### **16.2 Governing Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

### **16.3 Consent to Jurisdiction**

Each Partner:

- (a) irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or in any way connected to the dealings of any Partner or the Fund in connection with any of the above;
- (b) waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defence or otherwise, in any such proceeding brought in any of the above-named courts, any claim that such Partner is not subject personally to the jurisdiction of such court, that such Partner's property is exempt or immune from attachment or execution, that such proceeding is brought in an inconvenient forum, that the venue of such proceeding is improper, or that this Agreement or the subject matter hereof may not be enforced in or by such court; and
- (c) consents to service of process in any such proceeding in any manner permitted by the laws of the Province of Ontario, agrees that service of process by registered or certified mail, return receipt requested, at the address specified pursuant to Section 16.5 is reasonably calculated to give actual notice, and, to the extent not prohibited by applicable law, waives and agrees not to assert by way of motion, as a defence or otherwise, in any such proceeding any claim that service of process made in accordance with this paragraph does not constitute good and sufficient service of process.

### **16.4 Waiver of Jury Trial**

To the extent not prohibited by applicable law that cannot be waived, each Partner waives, and covenants that such Partner will not assert (whether as plaintiff, defendant or otherwise), any right to trial by jury in any forum in respect of any issue, claim or proceeding arising out of this Agreement or the subject matter hereof or in any way connected with the dealings of any Partner or the Fund in connection with any of the above, in each case whether now existing or hereafter arising and whether in contract, tort or otherwise. The Fund or any Partner may file an original counterpart or a copy of this paragraph with any court as written evidence of the consent of the Partners to the waiver of their rights to trial by jury.

### **16.5 Notices**

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered, faxed, sent by electronic mail (only in the case of notices, etc. sent by the Fund to a Limited Partner), or mailed (by certified or registered mail, return receipt requested and first-class postage paid), if to (a) any Limited Partner, at such Limited Partner's address as set forth in the Register, or to such Limited Partner's address or such Limited Partner's electronic mail address as set forth in such Limited Partner's Subscription Agreement, and (b) the General Partner or the Fund, at 280 King Street East, 4<sup>th</sup> Floor, Toronto, Ontario M5A 1K7, Attention: Kathie Johnston, Chief Compliance Officer facsimile number: (416) 363-2632, e-mail

kjohnston@aquilon.ca. Any such notice, request, demand or communication shall be deemed to have been duly given if personally delivered, sent by fax, sent by electronic mail or sent by the mails and shall be deemed received, unless earlier received, (i) if sent by certified or registered mail, return receipt requested, when actually received, (ii) if sent by overnight mail or courier, when actually received, (iii) if sent by fax, upon receipt of a transmission confirmation form, (iv) if delivered by electronic mail, when sent, and (v) if delivered by hand, on the date of receipt. Any party hereto may designate a different address to which notices and demands shall thereafter be directed by written notice given in the same manner and directed to the Limited Partners and/or the Fund as set forth above.

#### **16.6 Construction, Etc.**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof and each provision is hereby declared to be separate, severable and distinct. In the event any ambiguity or question of intent or interpretation arises under this Agreement, the parties hereto intend that this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of this Agreement.

#### **16.7 Interpretation**

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not alter or affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a Section refers to the specified Section of this Agreement. With respect to words used in this Agreement, the masculine gender shall include the feminine or neuter gender, and *vice versa*, as the context requires. The words “include”, “includes” and “including” mean “include”, “includes” or “including”, in each case, “without limitation”.

#### **16.8 Entire Agreement**

This Agreement (together with the Management Agreement and any Subscription Agreements among the Fund, the General Partner, any Limited Partner and any other party thereto) constitutes the entire agreement among the Partners and supersedes any prior communications, agreements and understandings, written or oral, with respect to the terms and conditions of the Fund, the arrangements among the Partners, and the other subject matter hereof.

#### **16.9 Confidentiality**

Except with the consent of the General Partner, each Limited Partner shall, unless otherwise required by law, maintain the confidentiality of all information furnished to it under this Agreement or in connection with the transactions contemplated hereby, other than information (i) generally known to the public, or (ii) already in the possession of such Limited Partner prior to receipt of such information from the General Partner or the Fund; provided, however, that any Limited Partner may communicate such information to any regulatory or self-regulatory body having jurisdiction over

such Limited Partner or the advisor of such Limited Partner to the extent required by such body, and provided, further, that any Limited Partner may communicate any such information to its lawyers and other advisors or consultants who are informed of the confidential nature of such information and agree to be bound by the restrictions contained in this Section 16.9 (it being understood that each Limited Partner is responsible for breaches of such restrictions by persons and entities to which it has communicated such information pursuant to this proviso). With the consent of the General Partner, Limited Partners shall be entitled to disclose information to the members of their respective investment committees provided that (i) such individuals are advised of the confidential nature of the information and the Limited Partner causes such individuals to comply with the provisions of this Section 16.9; and (ii) such members of the investment committee are not themselves subject, directly or indirectly, to federal or provincial freedom of information or similar legislation. Notwithstanding the foregoing, if a Limited Partner has been requested or is required (by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process in connection with either a civil matter or a request of a federal, provincial or state government agency) to disclose any confidential information, other than to a regulatory or self-regulatory body described in the immediately preceding sentence, such Limited Partner will promptly notify the General Partner of such request or requirement so that the General Partner may seek an appropriate protective order or waive such Limited Partner's compliance with the provisions of this Section 16.9. Each Limited Partner agrees to cooperate fully with the General Partner in seeking any such protective order.

#### **16.10 Legal Counsel**

Each Partner hereby acknowledges and agrees that McCarthy Tétrault LLP, the law firm retained by the Fund in connection with the formation of the Fund, does not and will not represent the Limited Partners in connection with the formation of the Fund, the offering of interests in the Fund, the management and operation of the Fund, or any dispute which may arise between any Limited Partner on one hand and the General Partner or the Fund on the other hand.

#### **16.11 Waiver of Partition**

Each Partner hereby waives any rights to partition of Fund property.

#### **16.12 Successors**

This Agreement shall be binding on the executors, administrators, estates, heirs, legal representatives, successors and permitted assigns of the Partners.

#### **16.13 Benefits of Agreement; No Third-Party Rights**

The provisions of this Agreement are intended solely to benefit the Partners and the Indemnified Parties and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any non-Partner creditor of the Fund (and no such non-Partner creditor shall be a third party beneficiary of this Agreement), and no Partner shall have any duty or obligation to any non-Partner creditor of the Fund to make any contributions to the Fund.

#### **16.14 Time of the Essence**

Time shall be of the essence of this Agreement.

#### **16.15 No Waiver**

The failure of any party to insist upon strict adherence to any provision of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to such provision or any other provision of this Agreement. No purported waiver shall be effective as against any party unless consented to in writing by such party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach.

#### **16.16 Currency**

Unless otherwise indicated, all references in this Agreement to sums of money and all transactions entered into and calculations made hereunder shall be in the lawful currency of Canada.

#### **16.17 Accounting Terms**

Any reference in this Agreement to “generally accepted accounting principles” refers to generally accepted accounting principles as recommended from time to time by the Canadian Institute of Chartered Accountants or any successor institute or as otherwise determined by the General Partner pursuant to Section 12.1.

#### **16.18 Judgment Currency**

If, for the purpose of calculating the amount of any judgment in any court, it is necessary to convert the currency of any obligation giving rise to the judgment (the “First Currency”) into another currency (the “Other Currency”), then the rate of exchange used shall be that at which the party obtaining such judgment could purchase the First Currency with the Other Currency from any Canadian chartered bank determined at the close of business on the Business Day immediately preceding the day on which judgment is rendered. The obligation of the party making payment on account of any judgment shall, notwithstanding any judgment in such Other Currency, be discharged only to the extent that, on the Business Day following the receipt of any sum paid on account of the judgment in the Other Currency, the recipient could purchase the First Currency from any Canadian chartered bank at 12:00 noon (local time of the recipient) on such date. If the value of the First Currency so purchased or capable of being purchased is less than the sum due to the payee in the First Currency before conversion into the Other Currency, the payor, as a separate and distinct obligation and notwithstanding such judgment or payment, shall indemnify the payee against any loss and, if the value of the First Currency so purchased or capable of being purchased exceeds the sum originally due to the payee in the First Currency before the conversion into the Other Currency, the payee shall remit such excess to the payor.



### **16.19 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Business Day, such payment shall be made or such action shall be taken on the next succeeding Business Day and, in the case of the payment of any monetary amount, the extension of time shall be included for the purposes of computation of interest, if any, thereon.

### **16.20 Limited Partner Representations, Warranties and Covenants**

The representations, warranties, covenants and indemnities of each Limited Partner set out in such Limited Partner's Subscription Agreement with the Fund are incorporated by reference herein and each Limited Partner hereby confirms and restates such representations, warranties and covenants.

### **16.21 Survival**

The representations, warranties, covenants, conditions and indemnities contained herein or incorporated herein by reference shall remain valid after the execution of this Agreement and each Limited Partner shall be required to ensure that each representation and warranty made by such Limited Partner remains true for so long as such Limited Partner remains a Limited Partner.

### **16.22 Counterparts**

This Agreement may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart; provided, however, that each separate counterpart shall have been executed by the General Partner and that the several counterparts, in the aggregate, shall have been executed by all of the Partners.

## **17. DEFINITIONS.**

### **17.1 Definitions**

The following capitalized terms used in this Agreement shall, unless the context otherwise requires, have the respective meanings set forth below and grammatical variations of such terms shall have corresponding meanings:

“**Act**” means the *Limited Partnerships Act* (Ontario), as it may be amended from time to time, and any successor to such statute.

“**Additional Units**” has the meaning set out in Section 9.3.

“**Affiliate**” of any person means any person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person. The term “control” means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

“**Agreement**” has the meaning set out in the recitals to this Agreement, as the same may be amended from time to time.

“**Assignee**” has the meaning set out in Section 11.4.

“**Arbitrage**” means the trade of electricity in two or more electricity markets for simultaneous delivery hours in order to profit from price discrepancies.

“**Business Day**” means a day other than a Saturday or Sunday on which banks are open for the transaction of business in Toronto, Ontario.

“**Canadian Resident Person**” has the meaning set out in Section 9.1.

“**Chairman**” has the meaning set out in Section 15.3.

“**Closing**” means any closing of an offering of Units by the Fund in accordance with the terms hereof.

“**Counterparty**” means an independent participant in all or part of the North American wholesale deregulated electricity market. Counterparties can be categorized as either a Regional Transmission Organization or any other power market participant.

“**Declaration**” means the declaration filed under the Act establishing the Fund as a limited partnership, as the same may be amended from time to time.

“**Dissolution Event**” has the meaning set out in Section 4.4.

“**Electricity Market**” means a trading forum for electricity that bears a unique combination of market open time, market close time, scheduling deadline, settlement price, point of delivery and counterparty.

“**Extraordinary Resolution**” means a resolution passed by the affirmative vote, whether in person or by proxy, by Limited Partners representing more than 75% of the Units, cast at a duly constituted meeting of Limited Partners, or an adjournment or postponement thereof, called for the purpose of considering such resolution or, alternatively, a written resolution signed in one or more counterparts by Limited Partners representing more than 75% of the Units.

“**Family Member**” means, with respect to any Limited Partner, any parent, spouse of a parent, child or grandchild or further issue, spouse of a child or grandchild or further issue, spouse, brother or sister (including step and adoptive relationships) of such Partner.

“**Financial Institution**” means a financial institution as defined in Section 142.2(1) of the Tax Act as it may be amended or replaced.

“**First Currency**” has the meaning set out in Section 16.18

“**Fund**” has the meaning set out in the recitals to this Agreement.

“**Fund Expenses**” has the meaning set out in Section 7.

“**General Partner**” means Silverhill Ltd., a corporation existing under the laws of the Province of Ontario, or any other party which may become general partner of the Fund in place of, in addition to, or in substitution for Silverhill Ltd. from time to time, in each case until such general partner ceases to be the general partner of the Fund and in each case in its capacity as general partner of the Fund.

“**GP Distribution**” has the meaning set out in Section 7.1.

“**Indemnified Party**” has the meaning set out in Section 6.

“**Initial Limited Partner**” has the meaning set out in the recitals to this Agreement.

“**Interest**” means, in respect of a Partner at any time, the rights, obligations and interest of a Partner in the Fund at such time under this Agreement, which interest shall, in respect of Limited Partners, be represented by Units.

“**Limited Partner**” means any registered owner of Units whose name appears on the Register as maintained by the General Partner pursuant to Section 4(1) of the Act and includes the General Partner if and to the extent that the General Partner holds any class of Units.

“**Liquidator**” has the meaning set out in Section 4.3.

“**Majority-In-Interest of the Limited Partners**” means Limited Partners whose Units constitute a majority of the Units of all Limited Partners, excluding from such calculation (i) the Units of a Limited Partner which has transferred all of its Units to an Assignee which has not become a Limited Partner pursuant to Section 11, and (ii) the Units of any Limited Partner required to withdraw pursuant to Section 1.1.

“**Net Asset Value**” has the meaning set out in Section 2.3(a).

“**Net Asset Value per Unit**” has the meaning set out in Section 2.3(b).

“**Net Profit**” has the meaning set out in Section 7.2.

“**Organizational Expenses**” means all expenses (including, without limitation, travel, printing, legal, filing and accounting fees and expenses) incurred in connection with the organization, funding and start-up of the Fund and the General Partner.

“**Other Currency**” has the meaning set out in Section 16.18.

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

“**person**” means any individual, partnership, limited liability company, corporation, trust, estate or other entity.

“**Register**” has the meaning set out in Section 12.1.

“**Regional Transmission Organization**” means a group of transmission providers that are independent from market participants and jointly provide for lease non-discriminatory and regulated electric transmission capacity with a view to maintaining system reliability and optimizing their combined systems.

“**Related Party**” has the meaning set out in Section 8.

“**Short-Term Investments**” means (i) direct obligations of, or obligations which are guaranteed by, the United States of America or Canada, (ii) certificates of deposit, time deposits, demand deposits and bankers’ acceptances of major money centre banks or trust companies or Schedule I chartered banks under the *Bank Act* (Canada), (iii) commercial paper or finance company paper which is rated not less than prime-one or A-1 or their equivalents by Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Services or their successors, (iv) repurchase agreements secured by any one or more of the foregoing, (v) similar liquid securities intended to provide for the preservation of principal, and (vi) money market mutual funds or other investment pools that invest primarily in one or more of the foregoing.

“**Special Resolution**” means a resolution passed by the affirmative vote, whether in person or by proxy, by Limited Partners representing more than 66 $\frac{2}{3}$ % of the Units, cast at a duly constituted meeting of Limited Partners, or an adjournment or postponement thereof, called for the purpose of considering such resolution, or, alternatively, a written resolution signed in one or more counterparts by Limited Partners representing more than 66 $\frac{2}{3}$ % of the Units.

“**Subscription Agreements**” means the subscription agreements entered into between the Fund and the Limited Partners subscribing for Units and “**Subscription Agreement**” means any of them.

“**Subsequent Closing Date**” means the date upon which a Subsequent Closing occurs.

“**Subsequent Closings**” means, collectively, any Closings that occur after the Initial Closing and “**Subsequent Closing**” means any one of them.

“**Tax Act**” means the *Income Tax Act* (Canada), as the same may be amended or replaced from time to time.

“**Transfer**” has the meaning set out in Section 11.1.

“**Transmission Provider**” means a company that owns, operates or controls transmission facilities and offers transmission capacity for lease among wholesale electricity market participants.

“**Units**” has the meaning set out in Section 2.1.

“**Valuation Date**” means the last business day in each month.

IN WITNESS WHEREOF the parties have executed this Agreement.

**GENERAL PARTNER**

**SILVERHILL LTD.**

by \_\_\_\_\_  
Name:  
Title:

by \_\_\_\_\_  
Name:  
Title:

**INITIAL LIMITED PARTNER,  
ANDREW ARMSTRONG**

by \_\_\_\_\_  
Andrew Armstrong, in his personal capacity

**LIMITED PARTNERS, by their Attorney-in-Fact,  
SILVERHILL LTD.**

by \_\_\_\_\_  
Name:  
Title:

by \_\_\_\_\_  
Name:  
Title: