

**Attachment A**

**375/325 MW System Power Agreement**

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**375/325 MW SYSTEM POWER**

**SALE AGREEMENT**

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**between**

**THE MANITOBA HYDRO-ELECTRIC BOARD**

**- and -**

**NORTHERN STATES POWER COMPANY, a Minnesota Corporation**

**DATED MAY 27, 2010**

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## **375/325 MW SYSTEM POWER SALE AGREEMENT**

**DATED** the 27<sup>th</sup> day of May, 2010

**BETWEEN:**

**THE MANITOBA HYDRO-ELECTRIC BOARD,**

**(hereinafter referred to as “MH”),**

**- and –**

**NORTHERN STATES POWER COMPANY, a Minnesota Corporation**

**(hereinafter referred to as “NSP”).**

WHEREAS, NSP, a Minnesota corporation with headquarters in Minneapolis, Minnesota, is an investor owned utility that provides electric service to retail customers in the states of Minnesota, North Dakota and South Dakota, and, through an Affiliate, retail customers in the states of Wisconsin and Michigan;

AND WHEREAS, MH, is a Crown corporation established in 1949 and continued by *The Manitoba Hydro Act*, R.S.M. 1987, c. H190, as amended from time to time, for the purposes of, among other things, providing for the continuance of a supply of power adequate for the needs of the Province of Manitoba, providing and marketing products, services and expertise related to the development, generation, transmission, distribution, supply and end use of power within and outside of the Province of Manitoba, and marketing and supplying power to persons outside of the Province of Manitoba;

AND WHEREAS, NSP agrees to purchase and MH agrees to sell 375 MW of System Power during the Summer Season and 325 MW of System Power during the Winter Season pursuant to the terms and conditions set forth in this Agreement;

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

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

**ARTICLE 1**

**INTERPRETATION**

**1.1 Defined Terms**

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

“**125 MW System Power Sale Agreement**” shall mean the 125 MW System Power Sale Agreement entered into between NSP and MH concurrently with this Agreement.

“**150 MW Diversity Exchange Agreement**” shall mean the 150 MW Diversity Exchange Agreement between NSP and MH dated February 1, 1991, as amended.

“**200 MW Diversity Exchange Agreement**” shall mean the 200 MW Diversity Exchange Agreement between NSP and MH dated November 16, 1987, as amended.

“**350 MW Diversity Sale Agreement**” shall mean the 350 MW Diversity Sale Agreement entered into between NSP and MH concurrently with this Agreement.

“**325 MW System Power**” shall have the meaning set forth in Section 2.1(1)(b).

“**375 MW System Power**” shall have the meaning set forth in Section 2.1(1)(a).

“**375/325 MW System Power**” shall have the meaning set forth in Section 2.1(1).

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“**325 MW Use Limited System Capacity**” shall have the meaning set forth in Section 2.2(1)(b).

“**375 MW Use Limited System Capacity**” shall have the meaning set forth in Section 2.2(1)(a).

“**375/325 MW Use Limited System Capacity**” shall have the meaning set forth in Section 2.2(1).

“**2010 NSP/MH Agreements**” shall mean this Agreement, the 350 MW Diversity Sale Agreement, and the 125 MW System Power Sale Agreement.

“**Adjustment Factors**” shall have the meaning set forth in Section 5.1(2).

“**Adverse Water Conditions**” shall mean **[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

“**Adverse Water Energy**” shall have the meaning specified in Section 10.1.

“**Adverse Water Energy Price**” shall have the meaning specified in Section 10.3.

“**Adverse Water Right**” shall have the meaning specified in Section 10.1.

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

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“**Agreement**” shall mean this 375/325 MW System Power Sale Agreement and all amendments thereto.

“**Ancillary Services**” shall mean those ancillary services as currently defined under the TARIFF as well as those other reasonably similar services and products that may be included under the TARIFF or an applicable OATT from time to time, which are associated, directly or indirectly, with the 375/325 MW Use Limited System Capacity and/or the transmission of MH’s Energy.

“**Bankruptcy Code**” shall have the meaning set forth in Section 12.1(k).

“**BEA**” shall mean the US Department of Commerce’s Bureau of Economic Analysis or any successor agency.

“**BEA Selected Calendar Year**” shall have the meaning set forth in Section 4.1(2).

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

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

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

“**Confidential Information**” shall have the meaning set forth in Section 13.1(1).

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“**Contract Term**” shall mean May 1, 2015, through April 30, 2025 (unless terminated earlier pursuant to this Agreement).

“**Contract Year**” shall mean a twelve-month period, May 1 through April 30 of the following calendar year, whether or not within the Contract Term.

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

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

“**Day-Ahead Energy and Operating Reserve Market**” shall have the meaning set forth in the TARIFF.

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

“**Defaulting Party**” shall have the meaning set forth in Section 18.4(1).

“**Delivery Point**” shall have the meaning set forth in Section 2.5(1).

“**Discloser**” shall have the meaning set forth in Section 13.1.

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

“**Environmental Attributes**” shall mean any and all rights to any and all existing or future environmental benefits or attributes, renewable characteristics, avoided emissions, avoided greenhouse gas emissions, emission reductions, emissions or greenhouse gas emissions associated with or directly related to energy, whether pursuant to or arising from any laws of any Governmental Authority or international agreement, including but not limited to **[TRADE SECRET BEGINS**

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**TRADE SECRET ENDS]**, in each instance directly attributable to a specified quantity of energy, by virtue of or due to actual energy production, and in each instance whether such rights are allocated or measured on a per MWh basis or otherwise.

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]**

“**Environmental Reports**” shall have the meaning set forth in Section 9.3(1).

“**EST**” shall mean Eastern Standard Time.

“**Event of Default**” shall have the meaning set forth in Section 18.1.

“**Executive Officers**” shall be, in the case of MH the Senior Vice President of Power Supply, and in the case of NSP the Vice President of Commercial Operations of Xcel Energy Services Inc. or such other equivalent responsible position within each Party as may be designated by each Party from time to time.

“**Expected Peak Load in MISO**” shall mean the four (4) continuous hours with the largest cumulative load in MISO based on MISO’s load forecast or such four (4) continuous hours as specified by MISO.

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

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

“**Financial Schedule Exceptions**” shall mean any or all of the following: (a) any amount of Fixed Price Energy where no offer was made by MH into the Day-Ahead Energy and Operating Reserve Market during any curtailment time period referred to in Sections 3.5, 3.8, 3.9 or Article 15; (b) any amount of Fixed Price Energy that was MH’s Must Offer Energy and no offer was made pursuant to and in accordance with the provisions of Section 3.2(6); or (c) any amount of Fixed Price Energy that is decremented by MH exercising its Adverse Water Right.

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

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

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

“**Fixed Price Energy**” shall have the meaning set forth in Section 2.4(2).

“**Fixed Price Energy Price**” shall have the meaning set forth in Section 5.1(1).

“**Force Majeure**” shall mean an event or circumstances that prevents one Party from performing its obligations under this Agreement that is not within the reasonable control of, or the result of the negligence of, the claiming Party, and that, by the exercise of Good Utility Practice, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not restricted to, acts of God [**TRADE SECRET BEGINS,**

**TRADE SECRET ENDS]**, strikes, lockouts and other industrial disturbances, epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage or terrorism, civil insurrection, riots and civil disobedience, explosions, acts or omissions of any Governmental Authority taken after the Effective Date (including the

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adoption or change in any law or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such action or inaction by such Governmental Authority prevents or delays performance and renders the Party unable, despite due diligence, to obtain any licenses, permits, or approval required by any Governmental Authority, and the issuance of any order, injunction, or other legal or equitable decree interfering with the performance of a Party's obligations hereunder. Force Majeure shall not be based on: (a) the loss of NSP's Markets; (b) NSP's inability to economically use or resell the 375/325 MW System Power including NSP's ability to purchase the 375/325 MW System Power at a price less than the prices provided for in this Agreement; or (c) MH's ability to sell the 375/325 MW System Power at a price greater than the prices provided for in this Agreement.

**"GADS Data"** shall mean the information provided by MH to the North American Electric Reliability Corporation generating availability data system.

**"Gas Index"** shall have the meaning set forth in Section 10.3.

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

**"Governmental Authority"** shall mean any federal, state, or provincial government, parliament, legislature, or any regulatory authority, agency, commission or board of any of the foregoing, or any political subdivision thereof, or any court, or, without limitation, any other laws, regulation or rule-making entity, having jurisdiction in the

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relevant circumstances, or any Person acting under the authority of any of the foregoing, or any other authority charged with the administration or enforcement of applicable laws.

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

“**Guarantee Agreement**” shall mean a guarantee provided to the Requesting Party by a Credit Support Provider with an Investment Grade Credit Rating as Performance Assurance pursuant to Section 16.2 in a form acceptable to the Requesting Party acting with commercially reasonable discretion.

“**HE**” shall mean hour ending.

“**Heat Rate**” shall have the meaning set forth in Section 10.3.

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

“**Investment Grade Credit Rating**” shall mean with respect to any Person, a rating (unenhanced by unaffiliated third Party support) of not less than (a) BBB- from S&P; or (b) Baa3 from Moody’s; or (c) BBB(low) from DBRS, then assigned to its unsecured,

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senior long-term debt obligations (unenhanced by unaffiliated third Party support), provided, however, that, in any case where the Person is rated at the minimum required rating level, such Person shall not be placed on “credit watch” or “negative outlook” by the rating agency; and provided further, that in the event that any of S&P, Moody’s or DBRS have issued a rating below the required level or has placed the Person on “credit watch” or “negative outlook”, the lowest such rating shall apply to this Agreement.

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

“**Letter of Credit Default**” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s or A(low) by DBRS; (b) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (c) such Letter of Credit shall expire or terminate, or shall fail to cease to be in full force and effect at any time during the Contract Term; (d) any event analogous to an event specified in Section 18.1(c), (d) or (e) of this Agreement shall occur with respect to the issuer of such Letter of Credit; or (e) twenty (20) Business Days prior to the expiration or termination date of a Letter of Credit, such Letter of Credit is not extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced.

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“**Market**” or “**Markets**” shall mean:

- (a) a centrally operated structure or structures bringing together buyers and sellers to facilitate the exchange of wholesale electricity products and/or related services; and/or
- (b) the wholesale purchase and sale of electricity products and/or related services on a bilateral basis.

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

“**Market Settlement Amounts**” shall mean any and all charges attributable to either Party arising out of a process of determining charges established and maintained at any time and from time to time by a Market (or a Transmission Provider) including, without limitation, MISO administrative charges such as TARIFF Schedule 17 and Schedule 24 charges, Real-Time Revenue Sufficiency Guarantee Charges, and Transmission Usage Charges (each as defined under the TARIFF).

“**MH Early Termination Date**” shall have the meaning set forth in Section 18.4(1).

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

“**MH Termination Event**” shall have the meaning set forth in Section 18.5.

“**MH’s Additional Energy**” shall have the meaning set forth in Section 2.4(3).

“**MH’s Additional Energy Price**” shall have the meaning set forth in Section 5.1(4).

“**MH’s Border Accommodation Power Sales**” shall mean those sales of Firm Power made by MH, as seller, which for some operating and/or planning purposes are treated by MH as part of MH’s End-Use Load, to Persons located in provinces and states adjacent to the Province of Manitoba in circumstances whereby electric service to those locations is not otherwise readily available from other power suppliers, provided, however, that for purposes of this Agreement MH’s Border Accommodation Power

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Sales shall be deemed to be limited to a maximum aggregate load of 40 MW. In all cases, these sales are made over transmission systems lower than 115 kV.

“**MH’s Conditions Precedent**” shall have the meaning set forth in Section 14.1.

“**MH’s Curtailment of Curtailed Additional Energy**” shall have the meaning set forth in Section 3.5(4).

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

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

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

“**MH’s Energy**” shall have the meaning set forth in Section 2.4(1).

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

“**MH’s Energy Resources**” shall mean **[TRADE SECRET BEGINS**

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**TRADE SECRET ENDS].**

“**MH’s Existing Firm Transmission Service**” shall have the meaning set forth in Section 3.1(3)(a).

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

“**MH’s Firm LD Energy**” shall have the meaning set forth in Section 2.4(4).

“**MH’s Firm LD Energy Price**” shall have the meaning set forth in Section 5.1(4).

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

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

“**MH’s Must Offer Energy**” shall mean that portion of the Fixed Price Energy and MH’s Additional Energy, as applicable, made up of 375 MWh per hour during the Summer Season and 325 MWh per hour during the Winter Season for the Expected Peak Load in MISO.

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

“**MH’s Procedures**” shall have the meaning set forth in Section 9.3(1).

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

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

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

“**MHEB LMP**” shall mean the “Locational Marginal Price” as defined in the TARIFF at the MHEB Node.

“**MHEB Node**” shall mean the commercial pricing node at or near the international boundary between the Province of Manitoba and the United States of America, established by MISO and described as of the Effective Date by MISO as the “MISO MHEB interface node.”

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

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

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

“**Monthly Adverse Water Energy Adjustment**” shall have the meaning set forth in Section 10.4.

“**Monthly Capacity Price**” shall have the meaning set forth in Section 4.1(1).

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

“**NSP.NSP LMP**” shall mean the “Locational Marginal Price” as defined in the TARIFF at the commercial pricing node established by MISO and described as of the Effective Date by MISO as “NSP.NSP”.

“**NSP Early Termination Date**” shall have the meaning set forth in Section 18.4(1).

“**NSP Load Zone**” shall mean the geographic area that encompasses the major portion of NSP’s load in the State of Minnesota.

“**NSP Termination Event**” shall have the meaning set forth in Section 18.6.

“**NSP’s Conditions Precedent**” shall have the meaning set forth in Section 14.2.

“**NSP’s Curtailment of MH’s Curtailed Energy**” shall have the meaning set forth in Section 3.9(2).

“**NSP’s Existing Firm Transmission Service**” shall have meaning set forth in Section 3.1(3)(b).

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

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

“**Non-defaulting Party**” shall have the meaning set forth in Section 18.4(1).

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“**Off-Peak Hours**” shall mean the HE 1:00 to HE 6:00 CPT and HE 23:00 and HE 24:00 CPT Monday to Friday and HE 1:00 to HE 24:00 CPT Saturday and Sunday.

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

“**On-Peak Hours**” shall mean all hours that are not Off-Peak Hours.

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

“**Open Access Transmission, Energy and Operating Reserve Markets Tariff**” or “**TARIFF**” shall mean the Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midwest Independent Transmission System Operator, Inc. issued on February 3, 2009 filed to comply with *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,161 (2008) issued on November 10, 2008 in Docket Nos. EL07-86-000, EL07-88-000, and EL07-92-000, as amended, supplemented, or replaced from time to time.

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

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“**Operating Committee**” shall have the meaning set forth in Section 11.1(1).

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

“**Performance Assurance**” shall have the meaning set forth in Section 16.2(1).

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

“**Pledgor**” shall have the meaning set forth in Section 16.3(1).

“**Priority Criteria**” shall have the meaning set forth in Section 3.6.

“**Purchase and Sale Exclusion Event(s)**” shall mean any or all of the following events or circumstances: (a) MH’s offer in respect of any amount of MH’s Energy, (including for greater certainty any amount of MH’s Must Offer Energy component) does not clear the Day-Ahead Energy and Operating Reserve Market; (b) MH does not make an offer in respect of any amount of MH’s Energy (excluding MH’s Must Offer Energy); (c) MH does not make an offer in respect of MH’s Must Offer Energy pursuant to Section 3.2(6); or (d) any portion of MH’s Energy that was curtailed, restricted or reduced pursuant to Sections 3.4, 3.5, 3.8 or 3.9 or Article 15.

“**Purchased Environmental Attributes**” shall have the meaning set forth in Section 9.1(1).

“**Real Time Energy**” shall mean MH’s Energy delivered using Transmission Service in the Real Time Energy and Operating Reserve Market.

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

“**Recipient**” shall have the meaning set forth in Section 13.1.

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“**Representative**” shall have the meaning set forth in Section 13.1(2)(i).

“**Requesting Party**” shall have the meaning set forth in Section 16.2(1).

“**Required Approvals**” shall have the meaning set forth in Section 14.3.

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

“**S&P**” shall mean Standard & Poors Rating Group (a division of McGraw-Hill Inc.) or its successor.

“**Schedule**” or “**Scheduling**” shall mean the actions of seller, buyer, and their designated representatives, of notifying, requesting, and confirming to each other the quantity of MH’s Energy that the Parties attempt to deliver on any given day or days during the Contract Term.

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

“**Second Party**” shall have the meaning set forth in Section 16.2(1).

“**Secured Party**” shall have the meaning set forth in Section 16.3(1).

“**Summer Season**” shall mean the period of time from May 1<sup>st</sup> to and including October 31<sup>st</sup> in any Contract Year during the Contract Term.

“**Supplied Energy**” shall mean that portion of MH’s Energy that was, pursuant to this Agreement, supplied and sold by MH to NSP and for greater certainty shall not include any amount of MH’s Energy that: (i) was not offered by MH into the Day-Ahead Energy and Operating Reserve Market; (ii) was offered, but did not clear the Day-Ahead Energy and Operating Reserve Market; (iii) Fixed Price Energy that was decremented by the Adverse Water Right; or (iv) was curtailed, restricted or reduced pursuant to Sections 3.4, 3.5, 3.8 or 3.9 or Article 15.

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“**System Participation Power**” shall mean: (a) generating capacity that is intended to be available at all times, except as otherwise agreed by the seller and the purchaser (which excludes any generation reserves established or required by the RRO to which the purchaser belongs); and (b) energy which was contracted to be supplied by the seller to the purchaser.

“**System Power**” shall mean: (a) Use Limited System Capacity which was contracted to be made available by a seller to a purchaser (and for greater certainty does not include any generation reserves established or required by the RRO to which the purchaser belongs); and (b) energy which was contracted to be sold to a purchaser.

“**Third Party Claim**” shall mean a claim by any Person other than the Parties or their Affiliates.

“**Transfer System**” shall have the meaning set forth in Section 9.4(2).

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

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

“**Transmission Service**” shall have the meaning set forth in Section 3.1(8).

“**Transmission Service Reservation**” shall mean the reference number assigned to a transmission service agreement by a Transmission Provider.

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

“**US GDP Current Dollars**” shall have the meaning set forth in Section 4.1(2).

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“**US GDP Chained BEA Selected Calendar Year Dollars**” shall have the meaning set forth in Section 4.1(2).

“**US Gross Domestic Product Implicit Price Deflator**” shall have the meaning set forth in Section 4.1(2).

“**Unavailability of MH’s Purchased Power**” shall mean: (a) when all or a portion of the energy purchased from NSP (including any assignee of NSP) is not received by MH, under the provisions of one or more of the applicable energy or power purchase agreements (including without limiting the generality of the foregoing due to curtailment or force majeure thereunder) unless the said energy is not received by MH due to MH being in default under the provisions of the applicable agreement; or (b) the occurrence of an uncured Event of Default (as such term is defined in the 350 MW Diversity Sale Agreement) by NSP.

“**Use Limited System Capacity**” shall mean a capacity resource, that due to design considerations, environmental restrictions on operations, cyclical requirements, such as the need to recharge or refill, or for other non-economic reasons, is unable to operate continuously on a daily basis, but is capable of providing energy for a minimum of four (4) continuous hours of each day during the expected peak load of the system operator to which the purchaser belongs during the term of the applicable power purchase and sale agreement.

“**Weekdays**” shall mean Monday through Friday inclusive of any week, and “**Weekday**” shall mean any of the Weekdays.

“**Winter Season**” shall mean the period of time from November 1<sup>st</sup> to and including April 30<sup>th</sup> in any Contract Year during the Contract Term.

“**Winter Season Gas Index**” shall have the meaning set forth in Section 10.3.

“**Withheld Amount**” shall have the meaning set forth in Section 6.8.

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**1.2 Interpretation**

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

- (1) words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other;
- (2) any reference in this Agreement to any Person includes its successors and assigns, and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities;
- (3) any reference in this Agreement to any section or Appendix means and refers to the Section contained in, or Appendix attached to, this Agreement;
- (4) other grammatical forms of defined words or phrases have corresponding meanings to the defined words or phrases;
- (5) a reference to writing includes typewriting, printing, lithography, photography, and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form, including electronic mail;
- (6) a reference to a Party to this Agreement includes that Party's successors and permitted assigns;
- (7) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as amended from time to time and includes any exhibits or attachments thereto;
- (8) headings are inserted for convenience only and shall not affect the interpretation of this Agreement or any section thereto; and
- (9) the preamble hereto shall form an integral part of this Agreement.

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**1.3 No Presumption**

The Parties are both represented by counsel, have both participated in the negotiation and drafting of this Agreement, and have endeavoured to ensure that the terms of this Agreement are as clear as possible. Accordingly, in interpreting this Agreement there shall be no presumption in favour of or against any Party on the basis that it was or was not the drafter of this Agreement or any individual provision thereof.

**ARTICLE 2**

**SUPPLY AND PURCHASE OBLIGATIONS**

**2.1 MH System Power Sale**

- (1) Subject to the provisions of this Agreement, during the Contract Term, MH shall sell to NSP and NSP shall purchase from MH for the Contract Term:
  - (a) During each Summer Season, 375 MW of System Power (the “**375 MW System Power**”), and
  - (b) During each Winter Season, 325 MW of System Power (the “**325 MW System Power**”).

The 375 MW System Power and 325 MW System Power shall collectively be referred to as the “**375/325 MW System Power.**”

**2.2 Use Limited System Capacity**

- (1) Subject to the provisions of this Agreement, during the Contract Term, MH shall make available to NSP for the Contract Term:
  - (a) During each Summer Season, 375 MW of Use Limited System Capacity (the “**375 MW Use Limited System Capacity**”), and
  - (b) During each Winter Season, 325 MW of Use Limited System Capacity (the “**325 MW Use Limited System Capacity**”).

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The 375 MW Use Limited System Capacity and the 325 MW Use Limited System Capacity shall collectively be referred to as the “**375/325 MW Use Limited System Capacity**,” which is acknowledged by the Parties to be the generating capacity component of the 375/325 MW System Power that is being purchased and sold herein.

- (2) [Reserved]
- (3) MH covenants and agrees:
  - (a) MH shall not sell the 375/325 MW Use Limited System Capacity at any time during the Contract Term to any Person, other than NSP;
  - (b) MH shall make available the 375/325 MW Use Limited System Capacity from MH’s resources that are listed in Appendix “A” together with such additional resources that MH shall provide notice of;
  - (c) MH shall make available the 375/325 MW Use Limited System Capacity for the Expected Peak Load in MISO, seven days per week, for the duration of the Contract Term;
  - (d) MH shall forward to MISO all of its GADS Data during the Contract Term;
  - (e) MH shall ensure that during the Contract Term MISO is notified of any outages (including partial outages) that affect the 375/325 MW Use Limited System Capacity and the expected return date from such outages; and
  - (f) MH shall demonstrate during the Contract Term, in accordance with the requirements, as at the Effective Date, of NERC “Standard MOD-024-1 Verification of Generator Gross and Net Real Power Capability” of the claimed capability of the

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375/325 MW Use Limited System Capacity and it shall forward the results to MISO.

**2.3 [Reserved]**

**2.4 Energy**

- (1) Subject to the provisions of this Agreement, the quantity of energy to be purchased by NSP and sold by MH during the Contract Term shall be comprised of Fixed Price Energy plus MH's Additional Energy plus MH's Firm LD Energy (collectively referred to as "**MH's Energy**"). For greater certainty: (a) MH's Energy includes MH's Must Offer Energy; and (b) MH's Must Offer Energy is a component of Fixed Price Energy and MH's Additional Energy, as applicable, from time to time, but is not a component of MH's Firm LD Energy. MH's Energy shall, subject to the provisions of this Agreement, be offered on a Day-Ahead Basis in accordance with Section 3.2.
- (2) "**Fixed Price Energy**" shall be comprised of: (i) the total number of all Weekdays in each Summer Season during the Contract Term multiplied by sixteen (16) hours per day (HE 7 CPT to HE 22 CPT) multiplied by the 375 MW Use Limited System Capacity; and (ii) the total number of all Weekdays in each Winter Season during the Contract Term multiplied by twelve (12) hours per day (HE 9 CPT to HE 20 CPT) multiplied by the 325 MW Use Limited System Capacity.
- (3) "**MH's Additional Energy**" shall be comprised of for each day during the Contract Term such amounts of energy that is not Fixed Price Energy or MH's Firm LD Energy, that MH, in its sole discretion, determines that it has available for sale to NSP, and is offered by MH, on a Day-Ahead Basis, subject to the following conditions:

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- (a) the total of the Fixed Price Energy and MH's Additional Energy offered in any hour under this Agreement shall not exceed 375 MWh per hour at any given time within the hour during any Summer Season and 325 MWh per hour at any given time within the hour during any Winter Season during the Contract Term; and
  - (b) subject to the provisions of Section 3.2(3): (i) MH shall offer to NSP 375 MWh per hour of energy for the Expected Peak Load in MISO of each Saturday and Sunday, during the Contract Term, during the Summer Season; (ii) MH shall offer to NSP 325 MWh per hour of energy for the Expected Peak Load in MISO of each Saturday and Sunday, during the Winter Season; (iii) if during any Weekday of any of the Summer Seasons referred to in Section 2.4(2)(i) above, any of the hours of the Expected Peak Load in MISO is outside of HE 7 CPT to HE 22 CPT, MH shall offer 375 MWh for each hour of the applicable four (4) hours; and (iv) if during any Weekday of any of the Winter Seasons referred to in section 2.4(2)(ii) above, any of the hours of the Expected Peak Load in MISO is outside of HE 9 CPT to HE 20 CPT, MH shall offer 325 MWh for each hour of the applicable four (4) hours.
- (4) **"MH's Firm LD Energy"** shall be comprised of for each day during the Contract Term such amounts of energy that is not Fixed Price Energy or MH's Additional Energy that MH, at its sole discretion, determines that for any hour that it has available for sale to NSP, and is offered by MH, on a Day-Ahead Basis, subject to the condition that the total of the Fixed Price Energy, MH's Additional Energy and MH's Firm LD Energy offered in any hour under this Agreement shall not exceed 529 MWh per hour at any given time within the hour. The Parties acknowledge that MH's Firm LD Energy is not associated with the 375/325 MW Use

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Limited System Capacity and is associated with an additional up to 154 MW of capacity when offered by MH on a Day-Ahead Basis during the Summer Season and an additional up to 204 MW of capacity when offered by MH on a Day-Ahead Basis during the Winter Season, provided, however, that at such time as MH commences deliveries to NSP pursuant to the 125 MW System Power Sale Agreement, such amounts shall equal up to 29 MW of capacity during the Summer Season and up to 79 MW of capacity during the Winter Season.

- (5) Subject to the provisions of this Agreement, MH shall during the Contract Term, offer and make available MH's Energy to the Delivery Point and NSP shall accept delivery and pay for MH's Energy or alternatively, pay for MH's Energy if not taken.
- (6) The Parties acknowledge that subject to the requirement that MH's Must Offer Energy that is sold and supplied by MH to NSP, shall be supplied from MH's resources comprising the 375/325 MW Use Limited Capacity, MH, in its sole discretion, has the right, but not the obligation, to source, supply and/or sell MH's Energy from third party purchases and/or Markets available to MH. Without limiting the generality of the foregoing, the Parties acknowledge that MH has the right but not the obligation to utilize any Market mechanisms that are available to it throughout the Contract Term.
- (7) Notwithstanding any other term of this Agreement to the contrary, MH's right to offer and sell and NSP's obligation to accept and receive MH's Firm LD Energy shall be subject to and contingent upon the transmission necessary to deliver MH's Firm LD Energy having been and continuing to be qualified and accepted as a designated network resource pursuant to the TARIFF.

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**2.5 Delivery Point**

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

**2.6 Title and Risk of Loss**

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

**2.7 Ancillary Services**

- (1) The Parties acknowledge and agree that: (a) MH shall be entitled to retain all Ancillary Services and to sell the Ancillary Services to other Persons through the use of the Market Portal or otherwise; and (b) the price for the 375/325 MW System Power does not include any value in respect of or related to the Ancillary Services.
- (2) NSP explicitly acknowledges that MH retains the right to offer and/or schedule the Ancillary Services associated with any of MH's Energy into the MISO Market. This shall include in conjunction with Schedules for the delivery of MH's Energy to NSP in accordance with Section 3.2 or in MH's sole discretion, through the use of the Market Portal.
- (3) If MH's offer in respect of the Ancillary Services associated with the Fixed Price Energy clears the Day-Ahead Energy and Operating Reserve

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Market, MH shall be obligated to submit a Financial Schedule in the Day-Ahead Energy and Operating Reserve Market for such quantity of Fixed Price Energy and for greater certainty MH shall have no obligation to supply such quantity of energy to NSP.

- (4) If MH's offer in respect of the Ancillary Services associated with MH's Additional Energy or MH's Firm LD Energy clears the Day-Ahead Energy and Operating Reserve Market, the Parties acknowledge that MH shall have no obligation to supply such quantity of energy to NSP and NSP shall have no obligation to pay for such quantity of energy.
- (5) NSP shall, if required pursuant to the Market mechanisms in effect at the applicable time, approve any valid NERC E-Tag, prepared pursuant to and in accordance with the applicable Market procedures, associated with any offer of Ancillary Services made by MH pursuant to this Agreement into the Day-Ahead Energy and Operating Reserve Market and NSP shall take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time in respect of such offers.
- (6) In the event that NSP receives any compensation or payment from MISO or otherwise for Ancillary Services that were offered or scheduled by MH, NSP shall remit such compensation or payment to MH.

**ARTICLE 3**

**SCHEDULING AND DELIVERY**

**3.1 Transmission**

- (1) MH shall arrange and pay for Firm Transmission Service for the delivery of MH's Energy and making available the 375/325 Use Limited System Capacity that is sold by MH and purchased by NSP pursuant to this Agreement to the Delivery Point. Without limiting the generality of the

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foregoing, MH shall be responsible for the payment of any and all transmission charges assessed by a Transmission Provider for the delivery of MH's Energy and making available the 375/325 Use Limited System Capacity to the Delivery Point.

- (2) NSP shall arrange and pay for Firm Transmission Service for accepting the delivery of MH's Energy and receiving the 375/325 Use Limited System Capacity that is sold by MH and purchased by NSP pursuant to this Agreement from the Delivery Point. Without limiting the generality of the foregoing, NSP shall be responsible for the payment of any and all transmission charges assessed by a Transmission Provider for accepting the delivery of MH's Energy and receiving the 375/325 Use Limited System Capacity from the Delivery Point.
- (3) The Parties acknowledge that, as of the Effective Date:
  - (a) MH has the rights to Firm Transmission Service on the Canadian side of the Delivery Point evidenced on the MH OASIS by Transmission Service Reservation number 76703234 or successor number ("**MH's Existing Firm Transmission Service**"); and
  - (b) NSP has the rights to Firm Transmission Service on the United States side of the Delivery Point evidenced on the MISO OASIS by Transmission Service Reservation number 76703494 or successor number ("**NSP's Existing Firm Transmission Service**"),

provided that each acknowledgement is also subject to each Party's ability to rollover its existing Firm Transmission Service, consistent with the applicable OATT and regulatory requirements in accordance with Sections 3.1(4) or 3.1(5), as applicable and in the event it is unable to do so, such Party shall be obligated to use Commercially Reasonable Efforts

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to obtain Firm Transmission Service, as described in Sections 3.1(6) or 3.1(7), as applicable.

- (4) MH agrees to use Commercially Reasonable Efforts to preserve MH's Existing Firm Transmission Service for the Contract Term by exercising its rights of first refusal in accordance with its OATT and the TARIFF to rollover MH's Existing Firm Transmission Service; provided, however, that this provision shall not be construed as requiring that MH construct new transmission facilities. MH shall submit a Transmission Service request to rollover MH's Existing Firm Transmission Service to its Transmission Provider within one (1) month after the Effective Date and shall use Commercially Reasonable Efforts to obtain from the MH Transmission Provider approval of the Transmission Service request by six (6) months after the Effective Date or such other date as the Parties may mutually agree upon.
- (5) NSP agrees to use Commercially Reasonable Efforts to preserve NSP's Existing Firm Transmission Service for the Contract Term by exercising its rights of first refusal in accordance with its OATT and/or the TARIFF to rollover NSP's Existing Firm Transmission Service; provided, however, that this provision shall not be construed as requiring that NSP construct new transmission facilities. NSP shall submit a Transmission Service request to rollover NSP's Existing Firm Transmission Service to its Transmission Provider within one (1) month after the Effective Date and shall use Commercially Reasonable Efforts to obtain from the NSP Transmission Provider approval of the Transmission Service request by six (6) months after the Effective Date or such other date as the Parties may mutually agree upon.

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- (6) In the event that MH is unable to rollover MH's Existing Firm Transmission Service or any portion thereof, MH shall use Commercially Reasonable Efforts to obtain Firm Transmission Service.
- (7) In the event that NSP is unable to rollover NSP's Existing Firm Transmission Service or any portion thereof, NSP shall use Commercially Reasonable Efforts to obtain Firm Transmission Service.
- (8) The existing or new Firm Transmission Service obtained by MH and NSP pursuant to the terms of Section 3.1 shall hereinafter be referred to as the "**Transmission Service**".
- (9) Notwithstanding Sections 3.1(6) and 3.1(7) MH and NSP shall not be obligated to construct new transmission facilities to obtain the Transmission Service.
- (10) The Parties further acknowledge that they may by mutual agreement use alternative Firm Transmission Service for the purpose of meeting their obligations pursuant to this Agreement.

**3.2 Offers and Scheduling**

- (1) NSP shall be required to Schedule any of MH's Energy that has been offered on a Day-Ahead Basis by MH but shall have no obligation to Schedule any such energy that is not offered on a Day-Ahead Basis. MH's Energy that is Scheduled shall be Scheduled using the Transmission Service.
- (2) All Scheduled MH's Energy shall be Scheduled and provide for delivery as follows:
  - (a) 375 MWh per hour of Fixed Price Energy during the Summer Season over the applicable portion of the sixteen (16) hour period between HE 7:00 CPT and HE 22:00 CPT of any Weekday; and
  - (ii) 325 MWh per hour of Fixed Price Energy during the Winter

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Season over the applicable portion of the twelve (12) hour period between HE 9:00 CPT and HE 20:00 CPT of any Weekday;

- (b) 375 MWh per hour (during the Summer Season) and 325 MWh per hour (during the Winter Season) of MH's Must Offer Energy that is a component of Fixed Price Energy and was not otherwise Scheduled pursuant to paragraph (a) hereof, or is a component of MH's Additional Energy, during the Expected Peak Load in MISO during all days;
  - (c) that amount of MH's Additional Energy, which together with Fixed Price Energy shall not exceed 375 MWh per hour (during the Summer Season) and shall not exceed 325 MWh per hour (during the Winter Season), over the hour(s) that MH offered MH's Additional Energy on a Day-Ahead Basis; and
  - (d) that amount of MH's Firm LD Energy, which together with Fixed Price Energy and MH's Additional Energy shall not exceed 529 MWh per hour over the hours that MH offered MH's Firm LD Energy on a Day-Ahead Basis.
- (3) MH shall during the Contract Term, subject to the provisions of this Agreement:
- (a) offer into the Day-Ahead Energy and Operating Reserve Market:
    - (i) MH's Must Offer Energy; and
    - (ii) **[TRADE SECRET BEGINS**

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**TRADE SECRET ENDS];**

and

- (iii) have the right, but not the obligation, to offer into the Day-Ahead Energy and Operating Reserve Market all or any portion of MH's Energy excluding MH's Must Offer Energy component of the Fixed Price Energy and MH's Additional Energy.
- (4) NSP shall, if required pursuant to the Market mechanisms in effect at the applicable time, approve any valid NERC E-Tag, prepared pursuant to and in accordance with the applicable Market procedures, associated with any offer of MH's Energy made by MH pursuant to this Agreement into the Day-Ahead Energy and Operating Reserve Market and NSP shall take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time in respect of such offers.
- (5) The price at which MH offers MH's Energy into the Day-Ahead Energy and Operating Reserve Market, shall be at the sole discretion of MH.
- (6) MH shall not be required to offer all or the applicable portion of MH's Must Offer Energy into the Day-Ahead Energy and Operating Reserve Market and, if applicable, **[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]** pursuant to Section 3.2(3)(a):

- (a) during an event of Force Majeure; or
- (b) in order to avoid curtailing, restricting or reducing service to MH's End-Use Load, to the extent that the 375/325 MW Use Limited System Capacity is unavailable due to a full or partial forced, or scheduled outage, in accordance with the Business

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Practices Manual for Resource Adequacy and the Business Practices Manual for Outage Operations.

- (7) During any applicable hour during the Contract Term that a Purchase and Sale Exclusion Event has occurred, MH shall have no obligation to sell and deliver and NSP shall have no obligation to purchase and receive that quantity of MH's Energy applicable to the Purchase and Sale Exclusion Event. In that event, NSP shall pay MH for the applicable quantity of Fixed Price Energy at the Fixed Price Energy Price, and the Financial Schedule provisions of Section 3.2(12) shall apply to the Parties in respect of that quantity of the Fixed Price Energy. For greater certainty, the Financial Schedule provisions of Section 3.2(12) shall not apply to and NSP shall not pay for any of the Fixed Price Energy that was curtailed, restricted or reduced pursuant to Sections 3.5, 3.8 or 3.9 or Article 15 and NSP shall not pay for any of MH's Firm LD Energy or MH's Additional Energy that did not clear the Day-Ahead Energy and Operating Reserve Market or was curtailed, restricted or reduced pursuant to Sections 3.4, 3.5, 3.8 or 3.9 or Article 15, as applicable.
- (8) Subject to the requirement that MH's Must Offer Energy that is sold and supplied by MH to NSP shall be supplied from MH's resources comprising the 375/325 MW Use Limited Capacity, the Parties shall, during the Contract Term, Schedule MH's Energy in a manner that would enable MH to satisfy its obligations under this Agreement utilizing MH's resources, (which includes MH's Electrical Generation Facilities), and/or third party purchases, and/or Markets available to MH and the right to utilize any Market mechanisms that are available to MH throughout the Contract Term to satisfy its obligations under this Agreement. Without limiting the generality of the foregoing, the Parties agree that the Market Portal may be utilized at MH's sole discretion to offer into the MISO market.

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- (9) Each Party shall be responsible for and pay their costs and expenses associated with the purchase and sale of MH's Energy under the applicable OATT and/or TARIFF, including without limitation, any Market Settlement Amounts. MH shall be responsible for any Market Settlement Amounts charged to NSP that were directly related to the purchase and sale of MH's Additional Energy (except any of MH's Must Offer Energy that is a component of MH's Additional Energy) under the applicable OATT and/or TARIFF.
- (10) MH shall, where required to submit an offer or electing to submit an offer in the Day-Ahead Energy and Operating Reserve Market for MH's Energy, subject to the provisions of Section 3.2(12), use a Dispatchable Interchange Schedule with an Offer in the Day-Ahead Energy and Operating Reserve Market in order to satisfy its obligations under this Agreement, based on the present Scheduling practices and procedures of the TARIFF. MH shall, subject to the provisions of Section 3.2(12), submit such Dispatchable Interchange Schedule with an Offer in accordance with the timing requirements of the Market Business Practices Manuals. NSP shall, if required pursuant to the Market mechanisms in effect at the applicable time, approve the Dispatchable Interchange Schedule with an Offer submitted by MH pursuant to this Agreement and take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time, in respect of Dispatchable Interchange Schedule with an Offer. Notwithstanding the foregoing, including Section 3.2(3), MH may in its sole discretion, utilize the Market Portal to Schedule into the MISO market.
- (11) During Maximum Generation Events, as defined under the MISO Emergency Operating Procedure RTO-EOP-002, MH shall have the right to utilize the Transmission Service to deliver Real Time Energy.

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- (12) In the event:
- (a) any portion of an offer from MH does not clear the Day-Ahead Energy and Operating Reserve Market in respect of the Fixed Price Energy; or
  - (b) MH elects to offer Fixed Price Energy directly into the MISO Portal regardless of whether such Fixed Price Energy clears the Day-Ahead Energy and Operating Reserve Market; or
  - (c) no offer in respect of any portion of the Fixed Price Energy (excluding Financial Schedule Exceptions) is made by MH into the Day-Ahead Energy and Operating Reserve Market;

then MH shall in respect of that quantity of Fixed Price Energy submit a Financial Schedule in the Day-Ahead Energy and Operating Reserve Market, for the quantity of the Fixed Price Energy referred to in this Section 3.2(12)(a), (b), and (c) above, specifying MH as the seller and NSP as the buyer and specifying the MHEB Interface Node as the Source, Sink, and Delivery Point except to the extent there has been a curtailment in accordance with Sections 3.5, 3.8, 3.9 or Article 15. NSP shall approve, if required pursuant to the Market mechanisms in effect at the applicable time, the Financial Schedule submitted by MH pursuant to this Agreement and take such other actions as may be reasonably requested by MH pursuant to the Market mechanisms in effect at the applicable time in respect of such Financial Schedule. The Parties acknowledge that pursuant to the TARIFF that MISO will charge MH and pay NSP the MHEB LMP for the applicable quantity of the Fixed Price Energy Scheduled and the Financial Schedule submitted by MH in accordance with this Section 3.2(12) and together with NSP's obligation to pay for the quantity of Fixed Price Energy Scheduled at the Fixed Price Energy Price, this shall satisfy MH's obligation(s) to sell and NSP obligation(s) to purchase that quantity of Fixed Price Energy pursuant to Section 2.4. In addition, the Parties confirm that they may by mutual

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agreement change the settlement mechanism set out in this Section 3.2(12) and utilize a “contract for differences”.

- (13) As of the Effective Date, the terms of Sections 3.2(10) and (12) reflect the Scheduling practices and procedures of the TARIFF. Further the Parties are Market Participants, and in the event that, at any time after the Effective Date and prior to the end of the Contract Term: (i) either Party is no longer a Market Participant; or (ii) the TARIFF or the Market Business Practices Manuals are no longer in effect or are revised, to the extent that the requirements of Sections 3.2(10) and (12), would if complied with by either Party, achieve a result that would be materially inconsistent with the rights and obligations of the Parties pursuant to the other provisions of this Agreement; or (iii) the MISO market no longer exists, the Parties agree that a new Scheduling mechanism which is consistent with the rights and obligations of the Parties pursuant to this Agreement shall be established pursuant to Article 17.
- (14) Capitalized terms used in this Section 3.2 and not otherwise defined in this Agreement shall have the meanings prescribed in the TARIFF or the Midwest Market Initiative Business Practices Manual for Definitions.

**3.3 Transmission System Operations**

The Parties acknowledge that, as of the Effective Date, their respective Transmission Providers operate their transmission systems pursuant to the provisions of an OATT. Nothing in this Agreement shall obligate either Party or their respective Transmission Providers to maintain an OATT in effect during the Contract Term. Notwithstanding Section 3.1(9), in the event that either Party’s Transmission Provider ceases to maintain an OATT at any time during the Contract Term, that Party agrees that it shall allocate sufficient transmission capacity for delivery of the applicable amount of MH’s Energy to/from the Delivery Point, including the construction of new transmission facilities, if necessary, to comply with the provisions of this Section 3.3.

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**3.4 MH's Firm LD Energy**

Either Party shall be relieved of its obligations to sell and deliver or purchase and receive MH's Firm LD Energy without liability to the extent that, and for the period during which, such performance is prevented by the circumstances described in Sections 3.5(1) and 3.9(1). In the absence of the circumstances described in Sections 3.5(1) and 3.9(1), the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to the following:

- (a) In the event MH fails to deliver all or part of MH's Firm LD Energy that has already been accepted into the MISO Market or cleared the Day-Ahead Energy and Operating Reserve Market, as applicable, MH shall be responsible for any Market Settlement Amounts charged to NSP that were directly related to the failure to deliver, under the applicable OATT and/or TARIFF. Where MH's Firm LD Energy has cleared the Day-Ahead Energy and Operating Reserve Market the Parties also agree that: (i) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating Reserve Market was less than the MHEB LMP for the said applicable hour in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, MH shall be required to pay to NSP the difference in the said prices multiplied by the said quantity of energy; and (ii) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating Reserve Market was greater than the price in the MHEB LMP in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, NSP shall be required to pay to MH the difference in the said prices multiplied by the said quantity of energy; and

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- (b) In the event NSP fails to accept all or part of MH's Firm LD Energy that has already been accepted into the MISO Market or cleared the Day-Ahead Energy and Operating Reserve Market, as applicable, NSP shall be responsible for any Market Settlement Amounts charged to MH that were directly related to the failure to accept, under the applicable OATT and/or TARIFF. Where MH's Firm LD Energy has cleared the Day-Ahead Energy and Operating Reserve Market the Parties also agree that: (i) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating Reserve Market was less than the MHEB LMP for the said applicable hour in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, MH shall be required to pay to NSP the difference in the said prices multiplied by the said quantity of energy; and (ii) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating Reserve Market was greater than the price in the MHEB LMP in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, NSP shall be required to pay to MH the difference in the said prices multiplied by the said quantity of energy.

The Parties acknowledge that such payments shall be NSP's sole and exclusive remedy for MH's inability to deliver or supply all of MH's Firm LD Energy and shall not be an Event of Default.

**3.5 MH's Energy Curtailments**

- (1) MH shall have the right to curtail, restrict, or reduce the sale and supply of any of MH's Must Offer Energy in accordance with any of the following provisions:
- (a) an event of Force Majeure; or

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- (b) to the extent necessary to avoid curtailing, restricting or reducing service to MH's End-Use Load, in a manner consistent with and to the extent authorized by "Requirement 6.3 of NERC Standard EOP-002" or its successor requirements.
- (2) MH shall have the right to curtail, restrict, or reduce the supply of any of MH's Energy, (except for MH's Must Offer Energy which is governed by the provisions of Section 3.5(1) and MH's Firm LD Energy which is governed by the provisions of Section 3.4), in accordance with any of the following provisions:
  - (a) during any period(s) of time during the Contract Term, if there is either an: (A) Unavailability of MH's Purchased Power; or (B) all or a portion of MH's Electrical Generation Facilities' capacity is unavailable due to: (i) forced outages of one or more generating unit(s); or (ii) derates of one or more generating unit(s) caused by low water flow or other reason; or (iii) the unavailability of generation outlet capacity caused by a forced outage or derate of MH's HVDC System; or (iv) scheduled outages of generating unit(s) or MH's HVDC System, to the extent that such scheduled outages are reasonably necessary to avoid equipment damage to facilities or to avoid the deferral of normal or scheduled maintenance beyond that consistent with Good Utility Practice, and to the extent that such Unavailability of MH's Purchased Power or outages as referenced in any of clauses (i), (ii), (iii) or (iv) cause MH to have insufficient energy to serve MH's Energy Commitments (excluding any sales to an Affiliate of MH which are for the purpose of serving MH's End Use Load outside Canada), MH's Energy (with the exception of MH's Must Offer Energy which are governed by the provisions of Section 3.5(1)) may be curtailed, restricted or reduced by MH

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- by the amount determined after application of the Priority Criteria;
- (b) during any period(s) of time during the Contract Term to the extent an event of Force Majeure otherwise precludes MH's ability to make, or to continue to make available any of MH's Energy in accordance with this Agreement, MH's Energy (with the exception of MH's Must Offer Energy which are governed by the provisions of Section 3.5(1)) may be curtailed, restricted or reduced by MH by the amount determined after application of the Priority Criteria; or
  - (c) to the extent necessary to avoid curtailing, restricting or reducing service to MH's End-Use Load, in a manner consistent with and to the extent authorized by "Requirement 6.3 of NERC Standard EOP-002" or its successor requirements.
- (3) In the event of the exercise by MH of the right pursuant to Section 3.5(2)(a) and (b) to curtail, restrict or reduce any of MH's Energy (except for MH's Must Offer Energy which is governed by the provisions of Section 3.5(1) and MH's Firm LD Energy which is governed by the provisions of Section 3.4), MH shall:
- (a) subject to Section 3.5(3)(b), exercise that right only for an amount and for the applicable time period(s), after application of the Priority Criteria, that MH determines is necessary to respond to the circumstance giving rise to this right to curtail, restrict or reduce any of MH's Energy (except for MH's Must Offer Energy);
  - (b) **[TRADE SECRET BEGINS**

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**TRADE SECRET ENDS]; and**

- (c) exercise Good Utility Practice to overcome the circumstances giving rise to this right, provided however that NSP hereby acknowledges and agrees that the exercise of Good Utility Practice would not obligate MH to make additional purchases of energy from a third party and/or the Markets.
- (4) In the event MH curtails, restricts, or reduces the supply of any of MH's Additional Energy (but not including any of MH's Must Offer Energy that is a component of MH's Additional Energy) that has already been accepted into the MISO Market or cleared the Day-Ahead Energy and Operating Reserve Market, as applicable ("**MH's Curtailment of Curtailed Additional Energy**"), MH shall be responsible for any Market Settlement Amounts charged to NSP that were directly related to the curtailment, restriction or reduction in the supply of MH's Curtailment of Curtailed Additional Energy under the applicable OATT and/or TARIFF. Where MH's Curtailment of Curtailed Additional Energy has cleared the Day-Ahead Energy and Operating Reserve Market the Parties also agree that: (i) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating Reserve Market was less than the MHEB LMP for the said applicable hour in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, MH shall be required to pay to NSP the difference in the said prices multiplied by the said quantity of energy; and (ii) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating

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Reserve Market was greater than the MHEB LMP price in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, NSP shall be required to pay to MH the difference in the said prices multiplied by the said quantity of energy.

- (5) MH agrees that if a curtailment event that MH had provided notice of pursuant to Section 3.10, ended prior to the anticipated duration of such curtailment event, MH shall not, without of the consent of NSP, be entitled to offer that quantity of Fixed Price Energy that was subject to such curtailment until the original notice time period has expired.

**3.6 Curtailment Priority Criteria**

In the event of the exercise by MH of the right granted pursuant to Section 3.5(2)(a) and (b) to curtail, restrict or reduce any of MH's Energy (except for MH's Must Offer Energy which are governed by the provisions of Section 3.5(1) and MH's Firm LD Energy which is governed by the provisions of Section 3.4), then the following priority criteria (the "Priority Criteria") shall be used by MH to determine the amount of any of MH's Energy (except for MH's Must Offer Energy), for the applicable time period(s) that shall be subject to curtailment, restriction or reduction:

- (1) MH's End-Use Load shall have priority over all other power and energy sales of MH;
- (2) any energy sale by MH that is associated with planning capacity and is not part of MH's End-Use Load shall take priority over all other power and energy sales of MH, except for MH's End-Use Load;
- (3) all of MH's Firm LD Energy Sales and MH's Firm Energy Sales shall take priority over all other energy sales of MH except those referred to in (1) and (2) above;
- (4) all other energy sales by MH except those referred to in (1), (2) and (3) above; and

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- (5) in the event that more than one power or energy sale of the same types referred to in (2), (3), and (4) of this Section 3.6 exists, curtailment with respect to such power or energy sales shall be determined on a pro rata basis.

The Parties acknowledge that the purchase and sale of the applicable portion of MH's Energy pursuant to this Agreement is part of Section 3.6(2) above.

**3.7 Option to Continue Deliveries**

NSP acknowledges and agrees that: (a) no provision in this Agreement requires MH to implement the right granted pursuant to Sections 3.4, 3.5(1) or 3.5(2) to curtail, restrict or reduce MH's Energy; (b) MH retains the right to supply the applicable amount of MH's Energy, under conditions which give rise to the right to curtail, restrict or reduce the applicable amount of MH's Energy under Section 3.5(2), from any of MH's Electrical Generation Facilities, third party purchasers, Markets or market mechanisms available to MH, during any period of time, for which this right exists, provided MH does so for the entire period of time during which it had the right pursuant to Section 3.5(2) to curtail, restrict or reduce the applicable amount of MH's Energy to be supplied and does not selectively assert the right to provide the applicable amount of MH's Energy in only some, but not all, hours of the period of time when it would otherwise have the right to curtail, restrict or reduce the applicable amount of MH's Energy; and (c) in conjunction with the implementation of the right granted to MH pursuant to Section 3.5(2) to curtail, restrict or reduce any of the applicable amount of MH's Energy and MH's covenant to do so in accordance with the provisions of Section 3.6 and the Priority Criteria referenced therein. MH shall have the right, but not the obligation to curtail, restrict or reduce one type of its power and/or energy sales and not another type of its power and/or energy sales even though under the Priority Criteria the power and/or energy sale that was curtailed had a higher priority, subject to MH continuing to provide service, through purchases made from third parties, Markets and/or Market mechanisms available to MH, to the power and/or energy sale that was

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not curtailed despite having a lower priority. For greater certainty the exercise of this right does not restrict or limit MH's right granted pursuant to Section 3.5(2) to curtail, restrict or reduce the applicable amount of MH's Energy.

**3.8 Transmission Provider Curtailments**

- (1) In the event that the Transmission Provider(s) of MH and/or NSP reduces or curtails the Firm Transmission Service designated, allocated or required for the delivery of MH's Energy, MH's Energy that is to be supplied by MH and received by NSP shall be curtailed, restricted or reduced in accordance with the provisions of that Transmission Provider's OATT. The Parties also agree that where MH has been unable to obtain sufficient quantities of Net Scheduled Interchange including "ramp capability" to have its offer for MH's Energy clear the Day-Ahead Energy and Operating Reserve Market, that the quantity of MH's Energy that did not clear the said market shall be deemed to have been curtailed pursuant to this Section 3.8(1).
- (2) Subject to Sections 20.3 and 20.4, in the event MH or NSP or their respective Transmission Provider ceases to have an OATT, curtailment or reduction of MH's Energy schedules hereunder in order to maintain the reliable operation of the interconnected AC transmission system, shall be implemented exclusively in accordance with this Section. Curtailment of energy deliveries under this Section to accommodate such events shall be implemented until the required amount of loading relief has been obtained once the following actions have been undertaken, in the order specified: (a) all transmission service or transactions, that are lower than Firm Transmission Service, which contribute to the condition requiring curtailment; shall be curtailed first; (b) second the curtailing Party shall redispatch its generation system to continue the schedules hereunder consistent with producing the desired loading mitigation upon

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the congested facility(s); and (c) to the extent all transactions identified in clause (a) of this Section 3.8(2) are curtailed and system redispatch is not sufficient to produce the necessary mitigation that would avoid curtailment of the schedules under this Agreement, the transaction curtailment priority used by MH relative to all uses of such AC transmission system at the time shall be implemented in a comparable and non-discriminatory manner.

**3.9 NSP's Curtailments**

- (1) NSP shall have the right to refuse to accept and purchase any of MH's Energy (except MH's Firm LD Energy which is governed by the provisions of Section 3.4):
  - (a) to the extent an event of Force Majeure precludes NSP's ability to accept any of MH's Energy under this Agreement; or
  - (b) **[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

- (2) In the event NSP refuses to accept any of MH's Energy pursuant to Section 3.9(1), that has already been accepted into the MISO Market or cleared the Day-Ahead Energy and Operating Reserve Market, as applicable ("**NSP's Curtailment of MH's Curtailed Energy**"), NSP shall be responsible for any Market Settlement Amounts charged to MH that were directly related to the curtailment, restriction or reduction in the supply of NSP's Curtailment of MH's Curtailed Energy under the applicable OATT and/or TARIFF. Where NSP's Curtailment of MH's Curtailed Energy had cleared the Day-Ahead Energy and Operating Reserve Market the Parties also agree that: (i) if the MHEB LMP for the

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applicable hour in the Day-Ahead Energy and Operating Reserve Market was greater than the MHEB LMP in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, NSP shall be required to pay to MH the difference in the said prices multiplied by the said quantity of energy; and (ii) if the MHEB LMP for the applicable hour in the Day-Ahead Energy and Operating Reserve Market was less than the MHEB LMP price in the Real-Time Energy and Operating Reserve Market for the said quantity of energy, MH shall be required to pay to NSP the difference in the said prices multiplied by the said quantity of energy.

**3.10 Curtailment Notice**

Each Party shall provide as much notice as practicable to the other Party regarding the curtailment, restriction or reduction or refusal of the supply or acceptance, as applicable, of MH's Energy pursuant to Sections 3.4, 3.5(1), 3.5(2), 3.8 and 3.9. This shall include the anticipated duration of the curtailment, restriction, or reduction or refusal of the supply or acceptance, as applicable, of MH's Energy and where practicable daily updates.

**ARTICLE 4**

**CAPACITY PRICING**

**4.1 Capacity Pricing**

- (1) The Parties agree that the monthly price for the 375/325 MW Use Limited System Capacity (the "**Monthly Capacity Price**") required to be made available pursuant to Section 2.2 shall, subject to Section 4.1(2), be US [TRADE SECRET BEGINS TRADE SECRET ENDS] per MW-month (in 2006 US \$) and shall be escalated by [TRADE SECRET BEGINS TRADE SECRET ENDS] annually on May 1<sup>st</sup> of each Contract Year, with such escalation to commence on May 1, 2007.

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Based on this [TRADE SECRET BEGINS           TRADE SECRET ENDS], the Monthly Capacity Price for each month of the Contract Year shall be as follows:

<b>Contract Year Commencing</b>	<b>Price per MW Month</b>		<b>Contract Year Commencing</b>	<b>Price per MW Month</b>
May 1, 2015	US[TRADE SECRET]]		May 1, 2020	US[TRADE SECRET]
May 1, 2016	US[TRADE SECRET]		May 1, 2021	US[TRADE SECRET]
May 1, 2017	US[TRADE SECRET]		May 1, 2022	US[TRADE SECRET]
May 1, 2018	US[TRADE SECRET]		May 1, 2023	US[TRADE SECRET]
May 1, 2019	US[TRADE SECRET]		May 1, 2024	US[TRADE SECRET]

- (2) The Parties agree that if the average annualized rate of inflation as measured by the US Gross Domestic Product Implicit Price Deflator for the period from January 1, 2006 to December 31, 2014, inclusive, [TRADE SECRET BEGINS           TRADE SECRET ENDS], then the Monthly Capacity Price for the Contract Year commencing May 1, 2015 will be determined according to the following formula:

[TRADE SECRET BEGINS

**TRADE SECRET ENDS]**

**US Gross Domestic Product Implicit Price Deflator** = (US GDP Current Dollars (for the calendar year 2014) / US GDP Current Dollars (for the calendar

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year 2005)) / (US GDP Chained BEA Selected Calendar Year Dollars (for the calendar year 2014) / US GDP Chained BEA Selected Calendar Year Dollars (for the calendar year 2005)).

“**US GDP Current Dollars**” is the annual US GDP in current dollars as published by BEA for the calendar year 2014 and the calendar year 2005. The calendar year US GDP values used in the calculation will be based on the most recent statistics released by BEA as of April 29, 2015 and there shall be no revisions to this calculation regardless of whether there are changes or amendments to BEA statistics after April 29, 2015 for the applicable time periods.

“**US GDP Chained BEA Selected Calendar Year Dollars**” is the annual US GDP in chained BEA Selected Calendar Year dollars as published by BEA for the calendar year 2014 and the calendar year 2005. The calendar year US GDP values used in the calculation will be based on the most recent statistics released by the BEA as at April 29, 2015 and there shall be no revisions to this calculation regardless of whether there are changes or amendments to BEA statistics after April 29, 2015, for the applicable time periods.

“**BEA Selected Calendar Year**” will be the actual calendar year selected by BEA in order to measure US GDP in constant dollars as of April 29, 2015.

The Monthly Capacity Price at May 1, 2015 as determined above shall be escalated by [**TRADE SECRET BEGINS** **TRADE SECRET ENDS**] annually commencing on May 1, 2016 for each Contract Year during the remainder of the Contract Term.

- (3) Subject to the provisions of Sections 4.1(1) and 4.1(2), the Monthly Capacity Price shall remain fixed during a Contract Year.

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**ARTICLE 5**

**ENERGY PRICING**

**5.1 Energy Pricing**

- (1) The price for Fixed Price Energy (the “**Fixed Price Energy Price**”) shall for each Contract Year, subject to Section 5.1(2), be as set out in the following table:

<b>Contract Year Commencing</b>	<b>Price per MWh</b>	<b>Contract Year Commencing</b>	<b>Price per MWh</b>
May 1, 2015	US[ <b>TRADE SECRET</b> ]	May 1, 2020	US[ <b>TRADE SECRET</b> ]
May 1, 2016	US[ <b>TRADE SECRET</b> ]	May 1, 2021	US[ <b>TRADE SECRET</b> ]
May 1, 2017	US[ <b>TRADE SECRET</b> ]	May 1, 2022	US[ <b>TRADE SECRET</b> ]
May 1, 2018	US[ <b>TRADE SECRET</b> ]	May 1, 2023	US[ <b>TRADE SECRET</b> ]
May 1, 2019	US[ <b>TRADE SECRET</b> ]	May 1, 2024	US[ <b>TRADE SECRET</b> ]

- (2) The Parties agree that if the average annualized rate of inflation as measured by the US Gross Domestic Product Implicit Price Deflator for the period from January 1, 2007 to December 31, 2014 (using the published values for the 2014 and 2007 calendar years at the time that the initial published value is released for the 2014 calendar year), inclusive, [TRADE SECRET BEGINS TRADE SECRET ENDS], then the Fixed Price Energy Price for the Contract

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Year commencing May 1, 2015 will be determined according to the following formula:

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]**

The Fixed Price Energy Price at May 1, 2015 as determined above shall be escalated by **[TRADE SECRET BEGINS** **TRADE SECRET ENDS]** annually commencing on May 1, 2016 for each Contract Year during the remainder of the Contract Term and shall be multiplied by the Adjustment Factor applicable for each specified Contract Year.

The following are the adjustment factors (the “**Adjustment Factor(s)**”) for each specified Contract Year:

May 1, 2015 **[TRADE SECRET]**; May 1, 2016 **[TRADE SECRET]**; May 1, 2017 **[TRADE SECRET]**; May 1, 2018 **[TRADE SECRET]**; May 1, 2019 **[TRADE SECRET]**; May 1, 2020 **[TRADE SECRET]**; May 1, 2021 **[TRADE SECRET]**; May 1, 2022 **[TRADE SECRET]**; May 1, 2023 **[TRADE SECRET]**; and May 1, 2024 **[TRADE SECRET]**

- (3) Subject to the provisions of Sections 5.1(1) and 5.1(2), the Fixed Price Energy Price shall remain fixed during a Contract Year.
- (4) The price for MH’s Additional Energy (“**MH’s Additional Energy Price**”) and for MH’s Firm LD Energy (“**MH’s Firm LD Energy Price**”) **[TRADE SECRET BEGINS**

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**TRADE SECRET ENDS].**

- (5) The price for Real Time Energy, as described in Section 3.2(11), shall be the **[TRADE SECRET BEGINS**

**TRADE SECRET ENDS].**

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**ARTICLE 6**

**BILLING AND PAYMENT**

**6.1 Dollar Amounts**

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

**6.2 Payment in U.S. Dollars**

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

**6.3 Method of Payment of Invoices**

Payment of all invoices pursuant to this Agreement shall be made by the Party required to make the payment to the Party entitled to receive the payment by electronic bank transfer or by other mutually agreeable method(s), to the bank designated in Appendix "D" attached hereto. A Party may change the designation of the bank set out in Appendix "D" by notice to the other Party in accordance with Section 20.1 hereof. Payment shall be deemed to be made when received by the bank designated in Appendix "D".

**6.4 Rendering Invoices**

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

**6.5 Payment Amounts**

- (1) Except as expressly referred to in this Agreement, the amount payable by NSP to MH for each month during the Contract Term shall be determined as follows:

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375/325 MW Use Limited System Capacity

- (a) the Monthly Capacity Price (in U.S. Dollars per MW-month) applicable for that month determined in accordance with Section 4.1, multiplied by (i) the 375 MW Use Limited System Capacity for the six months of the Summer Season, and (ii) the 325 MW Use Limited System Capacity for the six months of the Winter Season; plus

Fixed Price Energy

- (b) the Fixed Price Energy Price (in U.S. Dollars per MWh) applicable for that month determined in accordance with Section 5.1, multiplied by the quantity of the Fixed Price Energy Scheduled to NSP for that month and/or the quantity of the Fixed Price Energy NSP is otherwise obligated to pay for pursuant to Section 2.4 for that month; plus
- (c) the Fixed Price Energy Price (in U.S. Dollars per MWh) applicable for that month, determined in accordance with Section 5.1, multiplied by the applicable quantity of Fixed Price Energy that was not Scheduled but that NSP is obligated to pay for pursuant to Section 3.2(7) for that month, determined in accordance with Section 3.2; less
- (d) the Fixed Price Energy Price (in U.S. dollars per MWh) applicable in that month as agreed to in accordance with Section 5.1, multiplied by the quantity of the Fixed Price Energy Scheduled but not delivered due to the provisions of Sections 3.5, 3.8, 3.9 and Article 15 for that month; plus

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MH's Additional Energy

- (e) the sum of the amount determined for each applicable hour that a quantity of MH's Additional Energy was Scheduled for that month and/or a quantity of MH's Additional Energy that NSP is otherwise obligated to pay for pursuant to Section 2.4 for that month determined for each applicable hour as follows:
  - (i) MH's Additional Energy Price (in U.S. Dollars per MWh) applicable for each applicable hour of each applicable day in that month, determined in accordance with Section 5.1(4), multiplied by the applicable quantity of MH's Additional Energy Scheduled for the corresponding applicable hour of the applicable day for that month, determined in accordance with Section 3.2; minus
  
- (f) the sum of the amount determined for each applicable hour that a quantity of MH's Additional Energy was reduced pursuant to Sections 3.5, 3.8, 3.9 or Article 15 that had been Scheduled during any day for that month as follows:
  - (i) MH's Additional Energy Price (in U.S. Dollars per MWh) applicable for each applicable hour of each applicable day in that month, determined in accordance with Section 5.1(4), multiplied by the applicable quantity of MH's Additional Energy reduced pursuant to Sections 3.5, 3.8, 3.9 or Article 15 that had been Scheduled for the corresponding applicable hour of the applicable day for that month; plus

MH's Firm LD Energy

- (g) the sum of the amount determined for each applicable hour that a quantity of MH's Firm LD Energy was Scheduled for that month

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and/or a quantity of MH's Firm LD Energy that NSP is otherwise obligated to pay for pursuant to Section 2.4 for that month determined for each applicable hour as follows:

- (i) MH's Firm LD Energy Price (in U.S. Dollars per MWh) applicable for each applicable hour of each applicable day in that month, determined in accordance with Section 5.1(4), multiplied by the applicable quantity of MH's Firm LD Energy Scheduled for the corresponding applicable hour of the applicable day for that month, determined in accordance with Section 3.2; minus
- (h) the sum of the amount determined for each applicable hour that a quantity of MH's Firm LD Energy was reduced pursuant to Section 3.4 or Article 15 that had been Scheduled during any day for that month as follows:
  - (i) MH's Firm LD Energy Price (in U.S. Dollars per MWh) applicable for each applicable hour of each applicable day in that month, determined in accordance with Section 5.1(4), multiplied by the applicable quantity of MH's Firm LD Energy reduced pursuant to Section 3.4 or Article 15 that had been Scheduled for the corresponding applicable hour of the applicable day for that month; plus
  - (i) any costs and expenses associated with the supply and receipt of MH's Energy under the applicable OATT that were billed to and paid by MH but were amounts that were required to be paid by NSP pursuant to Sections 3.1(2) and 3.2(9) and any amount to be paid by NSP to MH pursuant to Sections 3.4, 3.5(4) and 3.9(2); minus

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- (j) any costs and expenses associated with the supply and receipt of MH's Energy under the applicable OATT that were billed to and paid by NSP but were amounts that were required to be paid by MH pursuant to Sections 3.1(1) and 3.2(9) and any amount to be paid by MH to NSP pursuant to Sections 3.4, 3.5(4) and 3.9(2); minus
- (k) the Monthly Adverse Water Energy Adjustment; plus
- (l) the price for Real Time Energy applicable for each applicable hour of each applicable day in that month determined in accordance with Section 5.1(5) multiplied by the applicable quantity of Real Time Energy Scheduled for the corresponding applicable hour of the applicable day for that month, determined in accordance with Section 3.2(11).

**6.6 Payment Date**

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Any amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Interest Rate and such interest shall be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

**6.7 Estimates**

In the event that not all of the information necessary for the preparation of the monthly invoice is known in time for the preparation of the monthly invoice, estimates may be used on the monthly invoice to be followed with an adjustment on a future invoice to reflect actual charges if necessary. In the event that the amount paid or payable on any invoice or invoices delivered pursuant to this Agreement is based, in whole or in part,

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upon third party invoices and the third party subsequently adjusts their invoice, MH shall charge or credit NSP for the change in such third party invoice within sixty (60) Business Days of MH's receipt of such adjusted third party invoice.

**6.8 Billing Adjustments and Disputes**

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, except as otherwise provided in this Section 6.8, payment of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of the receipt of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be deducted by the Party receiving such overpayment from subsequent invoices rendered in the next succeeding calendar month by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.8 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. In the event that NSP disputes, in good faith, any invoice(s) or claims that any amount is not due and owing under this Agreement, NSP shall have the right, in respect of all disputed invoiced amounts, to withhold not more than a total aggregate amount that is the lesser of (i) the total amount in dispute on all disputed invoices, and (ii) one (1) million US dollars (US \$1,000,000.00) (the "**Withheld Amount**").

**6.9 Netting**

- (1) The billing departments of each of the Parties shall exchange settlement data under each of the 2010 NSP/MH Agreements. A netting computation of the amount that each Party has determined is due and

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owing under each of the 2010 NSP/MH Agreements for the applicable billing period shall be performed by each of the Parties by the third (3) Business Day following the last day of each billing month. If the Parties are in agreement as to the net amount owing by a Party under the 2010 NSP/MH Agreements, that net amount shall be paid by that Party by the date referenced in Section 6.6. If the net amount agreed upon is not paid by that date, or if the Parties are unable to agree on the net amount to be paid, all of the provisions of each of the 2010 NSP/MH Agreements, including the billing and payment provisions shall continue to govern the payment obligations of each Party, and all amounts due under this Agreement shall be paid in full on the Business Day immediately following the date payment is required to be made under this Agreement.

- (2) The payment by a Defaulting Party of any amounts due under all of the 2010 NSP/MH Agreements shall be a condition precedent to the payment of any amounts due by the Non-defaulting Party to the Defaulting Party under any of the 2010 NSP/MH Agreements.

**6.10 Payment in Full**

If the Parties subsequently mutually agree not to do netting of payment pursuant to Section 6.9 or only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any interest, and payments or credits, that Party shall pay such sum in full when due.

**6.11 Impact of Performance Assurance**

Unless the Party benefiting from Performance Assurance notifies the other Party in writing, and except in connection with a termination in accordance with Article 18, all amounts invoiced pursuant to this Article 6 shall not take into account or include any Performance Assurance which may be in effect to secure a Party's performance under this Agreement.

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**6.12 Accounting and Billing Procedures**

The Operating Committee may make and implement decisions regarding the creation and revision, from time to time, of accounting and billing procedures necessary to implement the terms and conditions of this Agreement including the provisions of this Article 6.

**6.13 Preliminary Billing Information**

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

**ARTICLE 7**

**GOVERNMENTAL CHARGES**

**7.1 Governmental Charges**

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

**7.2 Assistance**

Each Party shall provide reasonable assistance to the other Party in connection with and for the purpose of enabling due compliance with Governmental Charges and all associated information, documentation and reporting obligations. Each Party shall provide to the other and to a Governmental Authority having jurisdiction such forms,

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returns, reports, documents, elections, written declarations, certificates, etc. as the other Party may reasonably request, including without limitation any documentation that may be required to substantiate any available exemptions or relief from Governmental Charges.

**ARTICLE 8**

**METERING**

**8.1 Metering**

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

**ARTICLE 9**

**ENVIRONMENTAL ATTRIBUTES**

**9.1 Environmental Attributes of Energy**

- (1) The Parties agree that MH shall sell, transfer and convey and NSP shall purchase, accept and receive all Environmental Attributes (the "**Purchased Environmental Attributes**") associated with the Supplied Energy delivered to NSP pursuant to this Agreement that is allocated by MH as being attributable to MH's Energy Resources as determined pursuant to and in accordance with this Article 9.
- (2) The Parties acknowledge and agree that the consideration for the Purchased Environmental Attributes is included in the price for MH's Energy.

**9.2 Calculation of Environmental Attributes for Supplied Energy**

- (1) MH shall calculate the Environmental Attributes of the Supplied Energy, by determining the amount of energy that was allocated as being

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supplied to NSP from each of MH's Energy Resources. The calculations will identify the MWh of Supplied Energy supplied by MH, from each of MH's Energy Resources and the sum of these MWh shall equal the total MWh of Supplied Energy that was purchased by NSP in a particular month.

- (2) The determination of the MWh of Supplied Energy that was allocated as **[TRADE SECRET BEGINS            TRADE SECRET ENDS]** shall be made in the following manner:

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**TRADE SECRET ENDS].**

**9.3 Reporting of Environmental Attributes**

- (1) MH shall provide NSP during the Contract Term with: (i) a report on or before February 1 of each calendar year for the first ten (10) months or applicable portion of the preceding calendar year; (ii) a report on or before March 31 of each calendar year for all twelve (12) months or applicable portion of the preceding calendar year; (iii) a cumulative report on or before March 31 for each calendar year (except the last calendar year) which shall cover the period comprising the Contract Term up to December 31 of the prior calendar year; and (iv) a report on or before July 31, 2025, which covers the Contract Term (such reports are collectively referred to as the “**Environmental Reports**”) in accordance with the general procedures developed by MH for calculating and reporting on matters relating to the Purchased Environmental Attributes consistent with the provisions of this Agreement (“**MH’s Procedures**”).
- (2) Each Environmental Report shall identify: **[TRADE SECRET BEGINS**

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**TRADE SECRET ENDS].** The Environmental Reports shall contain reasonable detail of the calculations used by MH in preparing the Environmental Reports. Excluding the release of any proprietary, confidential or trade secret documentation or information of MH, MH shall provide NSP with the Environmental Reports information and documentation concerning the source data used to calculate the information provided in the Environmental Reports.

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**TRADE SECRET ENDS].**

**9.4 Transfer of Environmental Attributes**

- (1) MH shall transfer the Purchased Environmental Attributes to NSP applicable for each calendar year during the Contract Term within ninety (90) days following the end of the applicable calendar year.
- (2) MH shall register MH's Renewable Generation **[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]** (the "Transfer System"). NSP shall receive the transfer of the applicable amount of Purchased Environmental Attributes through the Transfer System. **[TRADE SECRET BEGINS**

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**9.5 [TRADE SECRET BEGINS**

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**9.6 Rights Conferred by Law**

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**TRADE SECRET ENDS].**

**ARTICLE 10**

**ADVERSE WATER RIGHT**

**10.1 Adverse Water Right**

For all Fixed Price Energy (including any MH's Must Offer Energy component thereof), if MH provides written notice to NSP prior to September 15 of any Contract Year during the Contract Term, that it has declared Adverse Water Conditions for that Contract Year, MH shall have the right (the "**Adverse Water Right**") in respect of the Fixed Price Energy, excluding MH's Must Offer Energy component thereof, that is to be sold by MH to NSP and is to be purchased by NSP from MH for that upcoming Winter Season, to nominate an amount of Adverse Water Right MW's (in multiples of

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50 MWs except for the remaining 25 MWs of Fixed Price Energy) of that Fixed Price Energy, which nominated amount will: (a) in respect of the Fixed Price Energy, notwithstanding Section 2.4 and Article 5, not be required to be sold by MH to NSP and will not be required to be purchased by NSP from MH during that Winter Season (the “**Adverse Water Energy**”), and the amount of Adverse Water Energy will decrement the amount of the Fixed Price Energy that is to be sold and purchased during the Contract Term; and (b) in respect of MH’s Must Offer Energy component MH shall remain obligated to offer MH’s Must Offer Energy component of the Fixed Price Energy into the Day-Ahead Energy and Operating Reserve Market. Notwithstanding any provision of this Agreement to the contrary, for MH’s Must Offer Energy component of Fixed Price Energy that is associated with Adverse Water Energy, if such MH’s Must Offer component clears the Day-Ahead Energy and Operating Reserve Market it shall be treated as MH’s Additional Energy for purposes of pricing and payment. If such MH’s Must Offer Energy component does not clear the Day-Ahead Energy and Operating Reserve Market then such energy shall not be delivered and shall not otherwise be scheduled or offered and such amount will be decremented from NSP’s obligation to pay under this Agreement and from MH’s obligation to make energy available. The Parties also acknowledge that the provisions of Section 3.2(12) shall not apply to such quantity of energy.

**10.2 Adverse Water Right Notice**

To exercise the Adverse Water Right during any Contract Year, MH shall give notice to NSP prior to September 15 of the Contract Year stating: (a) that MH is exercising the Adverse Water Right; and (b) the quantity of the Fixed Price Energy that MH is nominating as Adverse Water Energy for that Winter Season.

**10.3 Adverse Water Pricing**

The price for the Adverse Water Energy expressed in dollars per MWh during the applicable Winter Season (the “**Adverse Water Energy Price**”) shall be determined according to the following formula:

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Adverse Water Energy Price = Heat Rate x Winter Season Gas Index

where:

**Heat Rate** shall be [TRADE SECRET BEGINS TRADE SECRET ENDS]  
MMBtu per MWh

**Winter Season Gas Index** shall be the average of the Gas Index for each of the Winter Season months during the applicable Winter Season.

**Gas Index** shall mean the monthly forward price for each Winter Season month published by ICE on the first Business Day following the date that the Adverse Water Right is exercised by MH in US dollars per MMBtu for the NNG Ventura natural gas futures contract (or such other gas index as the Parties may mutually agree upon).

If one of the Parties gives notice to the other Party that the NNG Ventura price published by ICE is no longer an accurate reflection of the market price for the Gas Index, then MH and NSP shall mutually agree on an appropriate natural gas broker to determine the Gas Index. In the event the Parties cannot agree on an appropriate gas broker, MH and NSP shall each select one natural gas broker to provide a quote on the market price and the average of the two quotes will be used.

**10.4 Adverse Water Energy Adjustment**

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**ARTICLE 11**

**OPERATING COMMITTEE**

**11.1 Operating Committee**

- (1) A committee (the “**Operating Committee**”) is hereby constituted consisting of the Division Manager of Power Sales & Operations for MH or a duly authorized delegate from MH and the Manager Structured Purchases for NSP or a duly authorized delegate from NSP. Both MH and NSP shall have one vote, and all decisions of the Operating Committee must be unanimous to be effective.
- (2) The Operating Committee shall meet at the written request of either of its members within ten (10) Business Days of receipt of such request.

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Written minutes shall be kept of all meetings and copies of such minutes shall be distributed to the Operating Committee members and the Parties within five (5) Business Days after each meeting. The Operating Committee shall maintain written minutes of all meetings and the Operating Committee's decisions thereof.

- (3) The Operating Committee may:
- (a) make and implement decisions regarding the creation and revision, from time to time, of accounting and billing procedures necessary to implement the terms and conditions of this Agreement in accordance with Sections 6.12 and 6.13;
  - (b) make and implement decisions and procedures regarding Scheduling, from time to time as necessary to implement the terms and conditions of this Agreement in accordance with Section 3.2;
  - (c) make and implement decisions for operating procedures for the conduct of meetings and the recording of minutes;
  - (d) make recommendations to the Parties concerning amendment and revision of this Agreement;
  - (e) perform any other obligations expressly provided for in this Agreement and any other matters as they may agree from time to time; and
  - (f) settle any controversy, claim or dispute prior to referring such matters to the Executive Officers of NSP and MH for resolution in accordance with Section 17.1,

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

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**ARTICLE 12**

**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**12.1 General and US Bankruptcy Representations and Warranties**

Each Party makes the following representations and warranties to the other Party, which representations and warranties will be deemed to be repeated, if applicable, by each Party throughout the Contract Term:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) subject to Article 14, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms subject to any equitable defences;
- (e) it or its Credit Support Provider, if any, is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it or its Credit Support Provider, if any, being or becoming bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates or its Credit Support Provider, if any, any

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legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

- (g) no Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of another Party in so doing, and is capable of assessing and understanding the merits, and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement. Information and explanations related to the terms and conditions of this Agreement will not be considered advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other Party will be deemed to be an assurance or guarantee as to the expected results of this Agreement, unless such communication is expressly stated in writing to be a “guarantee” and is signed by the Party providing the statement;
- (i) it has entered into this Agreement in connection with the conduct of its business and it has, subject to the provisions of this Agreement, the capacity or ability to supply or take delivery of all MH’s Energy;
- (j) the other Party is not acting as a fiduciary for or an adviser to it in respect of this Agreement;

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- (k) this Agreement constitutes a “master netting agreement” and all transactions pursuant to it constitute “forward contracts” within the meaning of the United States Code (“**Bankruptcy Code**”) or a “swap agreement” within the meaning of the Bankruptcy Code;
- (l) it is a “forward contract merchant” within the meaning of the Bankruptcy Code with respect to any transactions that constitute “forward contracts” and a “swap participant” with respect to any transactions that constitute “swap agreements”;
- (m) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code;
- (n) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code;
- (o) it is a “master netting agreement participant” within the meaning of the Bankruptcy Code;
- (p) this Agreement grants each Party the contractual right to “cause the liquidation, termination or acceleration” of the transactions within the meaning of Section 556, 560 and 561 of the Bankruptcy Code, as they may be amended superseded or replaced from time to time;
- (q) upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbour provisions of the Bankruptcy Code set forth in, *inter alia*, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended superseded or replaced from time to time;

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- (r) it is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12);
- (s) it (i) is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this Agreement, or the products or by products thereof; and (ii) is offered or enters into this Agreement solely for purposes related to its business as such;
- (t) for the purposes of this Agreement it is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort; and
- (u) it is a Market Participant as of the date of the execution of this Agreement.

**12.2 MH Tax Representations**

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

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

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**12.3 NSP Tax Representations**

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

- (a) it is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for United States federal income tax purposes and its U.S. Taxpayer identification number is 41-1967505; and
- (b) no part of any payment received or to be received by NSP in connection this Agreement is attributable to a trade or business carried on or in respect of services rendered by it in the Canada.

**12.4 MH’s National Energy Board Covenant**

MH agrees to file an application for the approval of this Agreement with the National Energy Board of Canada within one-hundred and eighty (180) days after the Effective Date.

**12.5 NSP’s Minnesota Public Utilities Commission Covenant**

NSP agrees to file an application for approval of this Agreement with the Minnesota Public Utilities Commission within ninety (90) days after the Effective Date.

**ARTICLE 13**

**CONFIDENTIALITY**

**13.1 Confidentiality**

The Parties (each a “**Discloser**”) acknowledge that there is a need pursuant to this Agreement for each Party to disclose Confidential Information to the other Party (each a “**Recipient**”). The Parties wish to protect their Confidential Information and therefore agree as follows:

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- (1) “**Confidential Information**” shall mean all non-public and confidential information which information is treated by the Discloser and its representatives as confidential and which is conspicuously marked “Confidential” if in written or printed form, or if oral, which is specifically identified as confidential at the time of disclosure and is confirmed in writing to each other party as “Confidential” within five (5) Business Days of disclosure, unless (i) the information is or becomes publicly known through lawful means; (ii) the information was rightfully in Recipient’s possession or part of Recipient’s general knowledge prior to the date of this Agreement; or (iii) the information is disclosed to Recipient without confidential restriction by a third party who rightfully possesses the information (without confidential restriction) and did not learn of it, directly or indirectly, from Recipient.
- (2) Except as hereinafter provided, Recipient shall hold all Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party. Recipient shall take all reasonable measures to protect the confidentiality of, and avoid the unauthorized use, disclosure, publication, or dissemination of Confidential Information. Recipient may disclose Confidential Information:
  - (i) to its directors, officers, employees, members, agents or advisors, including, without limitation, its attorneys, accountants, consultants and financial advisors who need to know such information for the purposes of the transactions contemplated by this Agreement (each a “**Representative**”); and
  - (ii) to any other third parties, only with the prior written consent of the Discloser.

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- (3) If the Recipient or its Representatives are required to disclose the Confidential Information by law, regulation, ruling of a governmental agency, MISO, or by court order, before the Recipient or its Representatives disclose any Confidential Information, the Recipient or its Representatives shall give the Discloser timely written notice (at least 10 Business Days) of the requirement for disclosure and reasonably assist the Discloser to secure a protective order to limit disclosure of such Confidential Information only to parties agreeing to be bound by the terms of a confidentiality agreement in a form and content satisfactory to the Discloser, acting reasonably. Recipient shall cooperate reasonably in any such efforts to secure a protective order; provided, however, Recipient shall not be required to take, or refrain from taking, any action if it would cause Recipient or its Representatives to be in violation of the terms of a required disclosure described in this Section 13.1(3).
- (4) Recipient shall be liable for any use or disclosure of Confidential Information by its Representatives, which is not in compliance with the obligations imposed upon the Recipient pursuant to this Agreement.
- (5) All rights, title and interest in and to the Confidential Information are reserved by, and remain the sole property of the Disclosing Party. The Recipient does not acquire any intellectual property rights under this Agreement. Nothing in this Agreement shall be construed as a grant of, or intention or commitment to grant any right, title or interest of any nature whatsoever in or to the Confidential Information.
- (6) Recipient agrees that the unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury the amount of which may be difficult to ascertain or quantify, thus, making any remedy at law or in damages inadequate. Therefore, Recipient agrees that Discloser shall have the right to apply to any court of

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competent jurisdiction for an order restraining any breach or threatened breach of this Section and for any other relief Discloser deems appropriate. This right shall be in addition to any other remedy available to Discloser in law or equity.

- (7) This Article 13 shall survive any termination of this Agreement for a period of three (3) years.

**ARTICLE 14**

**CONDITIONS PRECEDENT**

**14.1 MH's Condition Precedent**

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

- (1) the final non-appealable approval of this Agreement by the National Energy Board of Canada, on conditions acceptable to MH, within eighteen (18) months after the Effective Date;
- (2) the Parties executing on the Effective Date an agreement to terminate the 150 MW Diversity Exchange Agreement such that subject to the conditions set out in such termination agreement, the 150 MW Diversity Exchange Agreement terminates on April 30, 2015;
- (3) the Parties executing on the Effective Date an agreement to terminate the 200 MW Diversity Exchange Agreement such that subject to the conditions set out in such termination agreement, the 200 MW Diversity Exchange Agreement terminates on April 30, 2015;
- (4) the Parties executing on the Effective Date the 125 MW System Power Sale Agreement and those conditions precedent contained therein that must be satisfied on or before May 1, 2015 have been satisfied;

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- (5) the Parties executing on the Effective Date the 350 MW Diversity Sale Agreement and all conditions precedent contained therein being satisfied within eighteen (18) months after the Effective Date; and
- (6) MH acquiring or maintaining in accordance with Section 3.1, the rights to at least 375/325 MW of the Transmission Service, for delivering MH's Energy and making available the 375/325 MW Use Limited System Capacity pursuant to this Agreement by six (6) months after the Effective Date.

**14.2 NSP's Conditions Precedent**

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

- (1) the final non-appealable approval of this Agreement by the Minnesota Public Utilities Commission, on conditions acceptable to NSP, within eighteen (18) months after the Effective Date;
- (2) the Parties executing on the Effective Date an agreement to terminate the 150 MW Diversity Exchange Agreement such that subject to the conditions set out in such termination agreement, the 150 MW Diversity Exchange Agreement terminates on April 30, 2015;
- (3) the Parties executing on the Effective Date an agreement to terminate the 200 MW Diversity Exchange Agreement such that subject to the conditions set out in such termination agreement, the 200 MW Diversity Exchange Agreement terminates on April 30, 2015;
- (4) the Parties executing on the Effective Date the 125 MW System Power Sale Agreement and those conditions precedent contained therein that must be satisfied on or before May 1, 2015 have been satisfied;

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- (5) the Parties executing the 350 MW Diversity Sale Agreement on the Effective Date and all conditions precedent contained therein being satisfied by eighteen (18) months after the Effective Date;
- (6) NSP acquiring or maintaining in accordance with Section 3.1, the rights to at least 375/325 MW of the Transmission Service, for accepting delivery of MH's Energy and receiving the 375/325 MW Use Limited System Capacity pursuant to this Agreement by six months after the Effective Date; and
- (7) approval by MISO that the 375/325 MW Use Limited Capacity qualifies as a "capacity resource" as that term is defined under the TARIFF as in effect as of the date of approval by six (6) months after the Effective Date.

**14.3 Required Approvals**

MH shall use Commercially Reasonable Efforts to secure the approvals listed in Sections 14.1(1) and (6). NSP shall use Commercially Reasonable Efforts to secure the approvals listed in Sections 14.2(1), (6) and (7) (these approvals for each Party collectively referred to as the "**Required Approvals**"). The Parties agree to provide reasonable assistance to the other Party, if requested, in order to assist that Party in obtaining the Required Approvals.

**14.4 Conditions Precedent Notices**

Each Party shall notify the other Party as soon as practicable following the satisfaction or the failure to satisfy MH's Conditions Precedent or NSP's Conditions Precedent, as applicable, including the failure to obtain any of the Required Approvals. This Agreement shall, subject to the obligations of the Parties in Section 14.3 and Article 18, terminate on the date notice has been received by one Party from the other Party that any of MH's Conditions Precedent or NSP's Conditions Precedent have not been satisfied.

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**ARTICLE 15**

**FORCE MAJEURE**

**15.1 Force Majeure**

Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure, provided that:

- (1) the non-performing Party shall give the other Party notice promptly (and within forty-eight (48) hours if possible) after the non-performing Party's knowledge of the commencement of the Force Majeure, with written confirmation to be supplied within ten (10) calendar days after the commencement of the Force Majeure further describing the particulars of the occurrence of the Force Majeure;
- (2) the delay in performance shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure;
- (3) the Party whose performance is delayed or prevented shall proceed with Commercially Reasonable Efforts to overcome the Force Majeure which is preventing or delaying performance and shall provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure, the schedule for such actions and the expected date by which performance shall no longer be affected by the Force Majeure; and
- (4) when the performance of the Party claiming the Force Majeure is no longer being delayed or prevented, that Party shall give the other Party notice to that effect.

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## **ARTICLE 16**

### **CREDITWORTHINESS**

#### **16.1 Credit Review Procedures**

For the purpose of determining whether a Party is able to meet its obligations pursuant to this Agreement, a Party may require commercially reasonable credit review procedures. If requested by a Party, the other Party shall deliver, unless such financial statements are available on “EDGAR” or “SEDAR” or on such other Party’s internet website (a) within 150 calendar days following the end of each fiscal year, a copy of such Party’s annual report containing audited consolidated financial statements for such fiscal year and (b) within 60 calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or such other principles then in effect, provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such Party shall diligently pursue the preparation, certification and delivery of the statements.

#### **16.2 Performance Assurances**

- (1) Should a Party’s creditworthiness, financial strength, or performance viability become unsatisfactory to the other Party in such other Party’s commercially reasonably exercised discretion with regard to any transaction pursuant to this Agreement, the dissatisfied Party (the “**Requesting Party**”) may require the other Party (the “**Second Party**”) to provide performance assurance, in the form of, at the Second Party’s option (but subject to the Requesting Party’s acceptance based upon commercially reasonably exercised discretion): (a) the posting of a Letter of Credit; (b) a cash prepayment; (c) the posting of other collateral or security by the Second Party that is acceptable to the Requesting Party

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in its commercially reasonably exercised discretion; (d) a Guarantee Agreement executed by a creditworthy Credit Support Provider approved by the Requesting Party; or (e) some other mutually agreeable method of satisfying the Requesting Party (“**Performance Assurance**”). The Requesting Party may only request, and the Second Party shall only be required to provide, Performance Assurance in a total amount up to the amounts due and owing, and projected to be due and owing, pursuant to this Agreement, for the period up to the date of the request and for the sixty (60) calendar day period following such request.

- (2) For purposes of determining a Party’s creditworthiness, financial strength, or performance viability as set out in Section 16.2(1), events which may be reviewed and considered by the Requesting Party to question the Second Party’s creditworthiness, financial strength or performance viability include, but are not limited to, any of the following:
  - (a) The Requesting Party having knowledge that the Second Party (or its Credit Support Provider, if applicable) are failing to perform or defaulting under other contracts;
  - (b) The Second Party’s, or its Credit Support Provider has debt which has an Investment Grade Credit Rating (unenhanced by unaffiliated third Party support) and the credit rating on that debt falls below an Investment Grade Credit Rating by at least one rating agency;
  - (c) The Second Party, or its Credit Support Provider has long term unsecured debt (unenhanced by unaffiliated third Party support) that is rated BBB- by S&P (or the equivalent rating from other national credit rating agencies) and the Second Party, or its Credit

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Support Provider, as appropriate, has been either placed on credit watch or negative outlook by at least one rating agency; and

- (d) Other material adverse changes in the Second Party's financial condition.
- (3) If the Second Party fails to provide Performance Assurance within five (5) Business Days of demand therefore, such failure will be considered an Event of Default under Article 18 of this Agreement and the Requesting Party shall have the right to exercise any of the remedies provided for under that Article 18. Nothing contained in this Article 16 shall affect any other credit agreement or arrangement, if any, between the Parties.
- (4) If the Second Party provides a Letter of Credit, the Second Party shall
  - (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, or
  - (ii) provide a substitute Letter of Credit at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit if the issuer has indicated its intent not to renew such Letter of Credit.

**16.3 Grant of Security Interest**

- (1) To secure its obligations under this Agreement and to the extent either or both Parties (or their Credit Support Provider, if applicable) deliver Performance Assurance hereunder, each Party (a "**Pledgor**") hereby grants to the other Party (the "**Secured Party**") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting there from or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority

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security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting there from or from the liquidation thereof.

- (2) Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, or an uncured event of default under one of the other 2010 NSP/MH Agreements, the Non-defaulting Party may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-defaulting Party or its agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
- (3) In addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) under applicable law, the Non-defaulting Party may, at its option and in its commercially reasonably exercised discretion and without prior notice to the Defaulting Party, setoff any amounts payable by it to the Defaulting Party under this Agreement (irrespective of currency, place of payment or booking office of obligation) against

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amounts that the Defaulting Party may owe it under any of the other 2010 NSP/MH Agreements. The obligations of the Parties under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff and recoupment.

- (4) The payment by the Defaulting Party of any amounts due under all of the 2010 NSP/MH Agreements (except any Withheld Amount) shall be a condition precedent to the payment of any amounts due by the Non-defaulting Party to the Defaulting Party under any of the 2010 NSP/MH Agreements.
- (5) The Non-defaulting Party shall use Commercially Reasonable Efforts to provide notice to the Defaulting Party as to the nature and amount of any setoff and recoupment after it is effected, but failure to give notice shall not impair the validity of any setoff and recoupment.

**ARTICLE 17**

**DISPUTE RESOLUTION**

**17.1 Condition Precedent to Arbitration**

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

**17.2 Initiation**

Arbitration proceedings must be initiated within one hundred and twenty (120) calendar days of the date the controversy, claim or dispute was first referred to the Executive

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

**17.3 Arbitration Proceedings**

Subject to Section 17.1 above, any and all controversies, claims or disputes between the Parties arising out of or relating to this Agreement or an alleged breach thereof, shall be settled by arbitration. For greater clarity and certainty, arbitration shall not be available to anyone who is not a party to this Agreement, and the aforesaid requirement to arbitrate shall not preclude a Party from seeking contribution, indemnification or damages from another Person in proceedings instituted by third parties in courts of competent jurisdiction. Unless otherwise provided in this Article 17, the arbitration shall be conducted before three arbitrators and shall be conducted in accordance with the International Commercial Arbitration Act (Ontario), RSO 1990, c.I9 and the UNCITRAL model Law on International Commercial Arbitration as amended and then in effect. Each Party shall select one arbitrator, and the two selected arbitrators shall jointly agree on a third arbitrator who shall chair the arbitration. All arbitrators shall be competent by virtue of education and experience in the particular matter subject to arbitration. Before proceeding with the first hearing, each arbitrator shall take an oath of office. The arbitrators shall require witnesses to testify under oath administered by a duly qualified person. The arbitrators shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this Agreement insofar as shall be necessary to determine the particular matter subject to arbitration. The arbitrators shall not have jurisdiction or authority to add to, detract from, or alter the provisions of this Agreement or any applicable law or rule of civil procedure. The

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arbitrators shall have the power to order specific performance under any and all provisions of this Agreement and no Party can avoid specific performance based on an argument that the other Party has an adequate remedy at law. All arbitrations shall be held in Toronto, Ontario.

**17.4 Jurisdiction**

The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of this Agreement. For that purpose, this Article 17 shall be treated as an agreement independent of the terms of the balance of this Agreement. A decision by the arbitrators that this Agreement is null and void shall not entail *ipso jure* the invalidity of this Article 17. If a Party disputes the authority or jurisdiction of the arbitrators, he shall notify the other Party as soon as the matter alleged to be beyond the authority or jurisdiction of the arbitrators is raised during the arbitration proceedings. The arbitrators may rule on the issue as to whether or not they have the authority or jurisdiction in dispute, either as a preliminary question or in an award on the merits.

**17.5 Discovery**

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

**17.6 Continuation of Performance**

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

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**17.7 Costs**

All fees, costs and expenses of the arbitrators incurred in connection with the arbitration shall be allocated among the Parties by the arbitrators. The nature of the dispute and the outcome of the arbitration shall be factors considered by the arbitrators when allocating such fees, costs, and expenses. Fees, costs, and expenses to be allocated shall not include the Party's own employees, expert consultants and attorneys, or the costs of exhibits.

**17.8 Enforcement**

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

**17.9 Correction and Interpretation of Award**

Within thirty (30) calendar days after receipt of an award, a Party, with notice to the other Party, may request the arbitrators to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature, or may request the arbitrators to give an interpretation of a specific point or a part of the award. If the arbitrators consider the request to be justified, they shall make the correction or give the interpretation within thirty (30) calendar days after receipt of the request. The interpretation shall form part of the award. The arbitrators may correct any error as herein-before referred to on their own initiative within thirty (30) calendar days after the date of award. In addition, within thirty (30) calendar days after receipt of an award, a Party with notice to the other Party may request the arbitrators to make an additional award as to claims presented in the arbitration but omitted from the award. If the

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arbitrators consider the request to be justified, they shall make an additional award within sixty (60) calendar days after receipt of the request. The arbitrators may extend, at their sole discretion if necessary, the period of time within which it shall make a correction, interpretation or an additional award.

**17.10 Regulatory Proceedings**

- (1) Notwithstanding anything to the contrary in this Article 17, each Party retains the right to make filings and complaints pertaining to the subject matter of this Agreement to regulatory agencies with authority over such Party and to seek any available relief from applicable regulatory agencies. Neither Party will use the existence of this Article 17 or the requirement to arbitrate disputes arising under this Agreement as a reason to seek dismissal of any regulatory proceeding commenced by the other Party. The Parties agree that no provision of this Agreement shall be interpreted however as an acknowledgement by MH that NSP has the right to make such filings or complaints pertaining to the subject matter of this Agreement or any transaction pursuant to this Agreement or that MH is subject to the jurisdiction of FERC.
- (2) Absent the agreement by the Parties, if it is determined that an applicable regulatory agency has jurisdiction over any transaction pursuant to this Agreement, the standard of review for changes to the rates, terms and conditions of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The standard of review for changes to the rates, terms and conditions of this Agreement proposed by a non-party or the FERC acting *sua sponte* shall be the most stringent standard permissible under applicable law.

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**ARTICLE 18**

**DEFAULT/TERMINATION**

**18.1 Events of Default**

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

- (a) the failure of either Party to make any payment to the other Party as required by this Agreement and such amount remains unpaid for a period of ten (10) Business Days after the date the Defaulting Party receives written notice from the Non-defaulting Party that the amount is overdue;
- (b) the failure by either Party to perform or observe any material obligation to the other Party under this Agreement, that is not excused by an event of Force Majeure, other than obligations for the payment of money, and such failure shall remain unremedied for thirty (30) Business Days after written notice thereof shall have been given by the Non-defaulting Party to the Defaulting Party;
- (c) the insolvency or bankruptcy of a Party or its Credit Support Provider, without such Party substituting another qualified Credit Support Provider within five (5) Business Days or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors;
- (d) the application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or

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- consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of thirty (30) calendar days;
- (e) the authorization or filing by a Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for thirty (30) calendar days or which result in adjudication of bankruptcy or insolvency within such time;
  - (f) in the event that a Party fails to provide Performance Assurance acceptable to the Requesting Party within five (5) Business Days of the date the Performance Assurance was to have been provided in accordance with Section 16.2(1);
  - (g) the occurrence of a Letter of Credit default that remains uncured for five (5) Business Days;
  - (h) the occurrence of an uncured Event of Default (as such term is defined in the 350 MW Diversity Sale Agreement) provided that the Non-defaulting Party may but is not obligated to determine whether to invoke its rights under this Agreement to declare an Event of Default associated with such occurrence, and provided further that the Non-defaulting Party shall provide the Defaulting Party notice of its intent to declare an Event of Default under this paragraph, concurrent with forwarding the notice referred to in

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Section 18.1(a) or (b) of the 350 MW Diversity Sale Agreement and/or Section 18.1(a) and (b) of the 125 MW System Power Sale Agreement;

- (i) the occurrence of an uncured Event of Default (as such term is defined in the 125 MW System Power Sale Agreement) provided that the Non-defaulting Party may but is not obligated to determine whether to invoke its rights under this Agreement to declare an Event of Default associated with such occurrence, and provided further that the Non-defaulting Party shall provide the Defaulting Party notice of its intent to declare an Event of Default under this paragraph, concurrent with forwarding the notice referred to in Section 18.1(a) or (b) of the 125 MW System Power Sale Agreement and/or Section 18.1(a) and/or (b) of the 350 MW Diversity Sale Agreement; or
- (j) any material representation or warranty made by the Defaulting Party in this Agreement that is proven to have been false in any material respect when made,

then, and in any such event, the Non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement by written notice to the Defaulting Party in accordance with Section 18.4.

**18.2 [Reserved]**

**18.3 Suspension of Performance**

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

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NSP Early Termination Date, as applicable, has been declared and notice thereof given pursuant to Section 18.4; and (b) to the extent an Event of Default has occurred and is continuing beyond any applicable cure period, to exercise any remedy available at law or in equity.

**18.4 Right to Terminate Following an Event of Default**

- (1) If at any time an Event of Default with respect to a Party (the “**Defaulting Party**”) has occurred and is then continuing beyond any applicable cure period, the other Party (the “**Non-defaulting Party**”) may, by not less than twenty (20) Business Days’ notice to the Defaulting Party specifying the relevant Event of Default, designate a Business Day not earlier than the day such notice is effective as a termination of this Agreement prior to the expiry of the Contract Term (which where MH is the Non-defaulting Party will constitute a “**MH Early Termination Date**” and where NSP is the Non-defaulting Party will constitute a “**NSP Early Termination Date**”).
- (2) In addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) under applicable law, the Non-defaulting Party may, at its option and in its commercially reasonably exercised discretion and without prior notice to the Defaulting Party, setoff any amounts payable by it to the Defaulting Party under this Agreement (irrespective of currency, place of payment or booking office of obligation) against amounts that the Defaulting Party may owe it under any of the other 2010 NSP/MH Agreements. The obligations of the Parties under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff and recoupment.
- (3) The payment by the Defaulting Party of any amounts due under all of the 2010 NSP/MH Agreements shall be a condition precedent to the

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payment of any amounts due by the Non-defaulting Party to the Defaulting Party under any of the 2010 NSP/MH Agreements.

- (4) The Non-defaulting Party shall use Commercially Reasonable Efforts to provide notice to the Defaulting Party as to the nature and amount of any setoff and recoupment after it is effected, but failure to give notice shall not impair the validity of any setoff and recoupment.

**18.5 MH Termination Events**

MH has the right, but not the obligation, to terminate this Agreement in the manner described below following any of the events, conditions or circumstances specified below (each a “**MH Termination Event**”):

- (1) immediately upon notice to NSP upon the termination of the 350 MW Diversity Sale Agreement prior to the expiry of the term of that agreement, unless the termination occurred due to occurrence of an uncured Event of Default (as such term is defined in the 350 MW Diversity Sale Agreement) by MH; and
- (2) immediately upon notice to NSP upon the termination of the 125 MW System Power Sale Agreement prior to the expiry of the term of that agreement, unless the termination occurred due to occurrence of an uncured Event of Default (as such term is defined in the 125 MW System Power Sale Agreement) by MH. For greater certainty the Parties acknowledge that this termination right does not extend to or include the circumstance where the 125 MW System Power Sale Agreement is terminated due to a condition precedent not being satisfied, provided that such condition precedent was to be satisfied by a date that is after May 1, 2015.

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**18.6 NSP Termination Events**

NSP has the right, but not the obligation, to terminate this Agreement in the manner described below following any of the events, conditions or circumstances specified below (each a “**NSP Termination Event**”):

- (1) immediately upon notice to MH upon the termination of the 350 MW Diversity Sale Agreement prior to the expiry of the term of that agreement, unless the termination occurred due to occurrence of an uncured Event of Default (as such term is defined in the 350 MW Diversity Sale Agreement) by NSP; and
- (2) immediately upon notice to MH upon the termination of the 125 MW System Power Sale Agreement prior to the expiry of the term of that agreement, unless the termination occurred due to occurrence of an uncured Event of Default (as such term is defined in the 125 MW System Power Sale Agreement) by NSP. For greater certainty the Parties acknowledge that this termination right does not extend to or include the circumstance where the 125 MW System Power Sale Agreement is terminated due to a condition precedent not being satisfied, provided that such condition precedent was to be satisfied by a date that is after May 1, 2015.

**18.7 Payment on Termination**

On or as soon as practicable following the effective designation of either an MH Termination Event or an NSP Termination Event, each Party shall calculate the amounts due and owing to it by the other Party, as applicable, for the period up to and including the termination date and each Party shall deliver an invoice to the other Party, as applicable, for the amount due which shall be payable in accordance with Article 6.

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**ARTICLE 19**

**LIMITATIONS**

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

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AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE 20**

**GENERAL**

**20.1 Notices**

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

if to the Manitoba Hydro-Electric Board:

Division Manager  
Power Sales & Operations  
Manitoba Hydro  
360 Portage Avenue  
Post Office Box 815  
R3C2P4  
Winnipeg, Manitoba  
Fax 204-360-6137

With copies to

Department Manager  
Export Power Marketing  
Manitoba Hydro  
360 Portage Avenue  
Post Office Box 815  
R3C 2P4  
Winnipeg, Manitoba  
Fax 204-360-6137

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if to Northern States Power:

Thomas A. Imbler, Vice President  
Commercial Operations  
Xcel Energy Services Inc.  
550 15th Street, Suite 1200  
Denver, CO 80202  
Fax 303-571-7021

With copies to:

Director Purchased Power  
Xcel Energy Services Inc.  
550 15<sup>th</sup> St., Suite 1000  
Denver, CO 80202  
Fax 303-571-7441

Manager Structured Purchases  
Xcel Energy Services Inc.  
550 15<sup>th</sup> St., Suite 1000  
Denver, CO 80202  
Fax 303-571-7441

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

**20.2 Operational Matters**

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

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**20.3 NSP's Merchant Functions**

NSP conducts its operations in a manner intended to comply with FERC Order No. 717 Standards of Conduct for Transmission Providers, requiring the separation of its transmission function and its merchant function. The Parties acknowledge that NSP's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open access transmission service. This Agreement is entered into by NSP on behalf of its merchant function. Nothing in this Agreement shall obligate NSP's transmission function to take or refrain from taking any action.

**20.4 MH's Marketing and Sales Function**

The Parties acknowledge that MH has established an open access transmission tariff and adopted the FERC "Standards of Conduct for Transmission Providers" which requires that MH's employees engaged in transmission system operations function independently from MH's marketing and sales employees and that MH treat all transmission customers on a non-discriminatory basis. This Agreement is entered into by MH on behalf of its marketing and sales function. Nothing in this Agreement shall obligate MH's transmission function to take or refrain from taking any action.

**20.5 Records**

Each Party shall keep complete and accurate records and memoranda of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item required hereunder. With respect to invoicing records, each Party shall maintain such records, memoranda and data for the current calendar year plus a minimum of three previous calendar years. The Parties, or their respective designees, shall each have the right upon reasonable prior notice to inspect, review and take copies of each other's records as far as such records concern monetary matters and may be reasonably necessary for the purpose of ascertaining the reasonableness and

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accuracy of any statements of cost relating to transactions hereunder. Each Party shall treat such information as Confidential Information.

**20.6 Indemnity**

- (1) Each Party shall indemnify and save harmless the other Party from and against all claims, actions, suits, proceedings, demands, assessments, judgments, charges, penalties, costs, and expenses which arise or are made or claimed against or suffered or incurred by the other as a result of:
  - (a) any breach by it of or any inaccuracy of any representation or warranty contained in this Agreement or in any agreement, instrument, certificate or other document delivered pursuant hereto; and
  - (b) any breach or non-performance by it of any covenant to be performed by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto.
- (2) The Parties agree:
  - (a) MH shall be deemed to be in exclusive control of the 375/325 MW System Power prior to the delivery by MH and receipt by NSP of the 375/325 MW System Power at the Delivery Point and MH shall be responsible for, and shall indemnify NSP from, any damages or injury NSP or any third party may suffer or incur, caused thereby except to the extent such damages or injury were caused by the gross negligence or wilful misconduct of NSP; and
  - (b) NSP shall be deemed to be in exclusive control of the 375/325 MW System Power from and after delivery by MH and

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receipt by NSP of the 375/325 MW System Power at the Delivery Point and shall be responsible for, and shall indemnify MH from, any damages or injury MH or any third party may suffer or incur, caused thereby except to the extent such damages or injury is caused by the gross negligence or wilful misconduct of MH.

For the purposes of this Section 20.6(2) “gross negligence or wilful misconduct” does not include negligent acts or negligent omissions by a Party, and “damages or injury” does not include indirect, incidental, and consequential damages and without restricting generality of the foregoing, does not include expenses or liabilities associated with the interruption of power, energy or related services to any third Person.

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

**20.7 Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Province of Manitoba and Canada. Any disputes arising under this Agreement that are not resolved by arbitration shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and Supreme Court of Canada.

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**20.8 Waiver of Right to Trial by Jury**

**EACH PARTY HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.**

**20.9 Foreign Sovereign Immunities Act**

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

**20.10 No Representation or Warranty for Injury**

It is acknowledged and agreed that the 375/325 MW Use Limited System Capacity, MH's Energy and related services are inherently dangerous, and MH offers no warranty, or representation, express or implied, that the 375/325 MW Use Limited System Capacity, MH's Energy or related services will not cause injury to Person, property or business.

**20.11 Surviving Termination**

All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement, including, the provisions relating to the billing of and payment for the 375/325 MW Use Limited System Capacity made available by MH and

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MH's Energy supplied by MH pursuant to this Agreement and the confidentiality provisions pursuant to Article 13 of this Agreement shall survive the Contract Term or the earlier termination of this Agreement as the case may be for a period of three (3) years following the expiration of the Contract Term or the earlier termination of this Agreement.

**20.12 [Reserved]**

**20.13 Enurement**

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

**20.14 Assignment**

Neither this Agreement nor any interest or obligation in or under this Agreement may be assigned (whether by way of security or otherwise) by either Party without the prior written consent of the other Party, except that either Party may, without consent, assign this Agreement (in whole and not in part only) to any of their respective Affiliates, provided that:

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

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

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

With respect to the results described in clauses (2) and (3) above, the non-assigning Party will cause the assignee to make, and the assigning Party will make, such reasonable representations as may be mutually agreed upon by the assigning Party, the assignee and the non-assigning Party in order to permit such parties to determine that such results will not occur upon or after the assignment.

**20.15 Waiver and Amendment**

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

**20.16 Counterparts**

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

**20.17 Recording of Communications**

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

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recordings to the other Party within ten (10) Business Days of the other Party's written request.

**20.18 Existing Agreements**

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

**20.19 No Other Rights**

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

**20.20 Entire Agreement**

This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written proposals and communications pertaining hereto, including a term sheet dated October 31, 2006 entered into by the Parties, as amended from time to time. There are no representations, conditions, warranties or agreements, express or implied, statutory or otherwise, with respect to or collateral to this Agreement other than contained herein or expressly incorporated herein.

*[Rest of page 113 intentionally left blank]*

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

THE MANITOBA HYDRO-ELECTRIC BOARD

---

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

I HAVE AUTHORITY TO BIND THE  
MANITOBA HYDRO-ELECTRIC BOARD

NORTHERN STATES POWER COMPANY, a  
Minnesota Corporation

---

By: Judy M. Poferl, President and CEO

I HAVE AUTHORITY TO BIND NORTHERN  
STATES POWER COMPANY

## Appendix A MH's Resources

### **Hydraulic Generation Facilities**

Pointe Du Bois  
Slave Falls  
Seven Sisters  
McArthur Falls  
Great Falls  
Pine Falls  
Grand Rapids  
Laurie River I  
Laurie River II  
Jenpeg  
Kelsey  
Kettle  
Long Spruce  
Limestone

### **Gas Generation Facilities**

Brandon Unit 6  
Brandon Unit 7  
Selkirk

### **Wind Energy Facilities**

St. Leon Wind PPA

### **Coal Generation Facilities**

Brandon Unit 5

## **Appendix B**

### **Calculation Methodology – Supplied Energy**

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]**

## **Appendix C**

### **MH's Energy Resources**

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]**

**APPENDIX D  
INTERBANK TRANSFER OF FUNDS ACCOUNT  
DESIGNATIONS**

**[TRADE SECRET BEGINS**

**TRADE SECRET ENDS]**