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**BRUCE POWER SHARING IN TRANSFERS AND  
REFINANCINGS AGREEMENT**

Among

**BRUCE POWER A L.P.**

- and -

**ONTARIO MUNICIPAL EMPLOYEES RETIREMENT BOARD**

- and -

**TRANSCANADA CORPORATION**

- and -

**ONTARIO POWER AUTHORITY**

DATED as of the 17<sup>th</sup> day of October, 2005

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## **BRUCE POWER SHARING IN TRANSFERS AND REFINANCINGS AGREEMENT**

This Bruce Power Sharing in Transfers and Refinancings Agreement is dated as of the 17<sup>th</sup> day of October, 2005 among Bruce Power A L.P., a limited partnership created under the laws of Ontario having its principal place of business near Tiverton, Ontario; Ontario Municipal Employees Retirement Board, the administrator of the Ontario Municipal Employees Retirement System, a pension plan registered under the laws of Ontario; TransCanada Corporation, a corporation incorporated under the laws of Canada; and the Ontario Power Authority, a corporation without share capital existing under the *Electricity Act* (Ontario).

**WHEREAS** the Government of Ontario, through the Minister of Energy, wishes to increase the long-term supply of generating capacity within the Province of Ontario;

**AND WHEREAS** the Generator currently leases, operates and maintains Bruce A and supplies Electricity from Bruce A to the IESO-Administered Markets;

**AND WHEREAS** the Generator plans to refurbish and restart Units 1 and 2, refurbish Unit 3, replace the steam generators of Unit 4, and supply Electricity from Bruce A, comprising the electrical generating units associated with Units 1, 2, 3 and 4, to the IESO-Administered Markets on the terms and conditions set out in the Implementation Agreement;

**AND WHEREAS** pursuant to the Implementation Agreement, certain of the Parties have agreed to certain financial transactions, subject to the condition that payments be made to the Counterparty in respect of Gains derived from Transfers or Refinancings undertaken by or for the benefit of Ontario Municipal Employees Retirement Board, TransCanada Corporation and certain others with an interest in the Generator and/or BPLP;

**AND WHEREAS** the Parties wish the Generator, BPLP and the Counterparty to execute the Implementation Agreement, and the Parties wish to execute this Agreement, to, among other things, formalize such agreements;

**AND WHEREAS** it is a condition to the entering into of the Implementation Agreement that the Parties enter into this Agreement;

**NOW THEREFORE**, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Definitions**

Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Implementation Agreement as such agreement exists on the date hereof. Other capitalized terms have the following meanings:

“**Adjusted Distribution Base Case**” means, at a particular time in respect of a Partner, the schedule of “net cash available for distribution” amounts set forth in the Distribution Base Case multiplied by the PPI of the applicable Partner, as modified to reflect the cash inflows to, and cash outflows from, the Partner in relation to each prior Incurrence undertaken by the Partner, or attributed to the Partner pursuant to Section 3.1 and to reflect any earlier Refinancing Payment or Transfer Payment made by the related TopCo on a basis that does not duplicate any previous allocation of the benefits associated therewith to the Counterparty, in each case by treating the related Gain as a cash outflow from the Partner as of the date of such payment (such Gain being equal to two times the related Refinancing Payment or Transfer Payment divided by the applicable TopCo’s DIP in the Partner). No other modifications to the original Distribution Base Case, other than in relation to the modifications of cash inflows and cash outflows resulting from prior Incurrences, shall be reflected in such Adjusted Distribution Base Case.

“**Agreement**” means this Bruce Power Sharing in Transfers and Refinancings Agreement, including all recitals, Exhibits and Schedules attached hereto, as it or they may be amended, amended and restated or replaced from time to time.

“**Arm’s Length Refinancing**” means a Refinancing undertaken by a Borrower from a Person that is not an Affiliate of the Borrower.

“**Attestation Certificate**” means a duly completed certificate of a senior officer of the Generator or a TopCo, as the context requires, in the form of the certificate set forth in Exhibit 1.1, which certificate shall accompany a Statement and attest to the matters contemplated in the Statement.

“**Beneficial Interest**” means, in respect of an entity’s interest in another entity or in specified assets, the entity’s direct and indirect beneficial, legal and/or equitable ownership interest in, and all valuable legal, equitable and economic rights and interests owing or derived from, such other entity or assets, determined on a consolidated basis without duplication.

“**Borrower**” means, in respect of a Refinancing, an obligor undertaking a borrowing thereunder.

“**BPLP**” means Bruce Power L.P. and its successors and permitted assigns under the Implementation Agreement.

“**Bruce B Floor**” means the rights and entitlements arising under Sections 3.2(c), 3.6 and 3.7 of the Implementation Agreement as such rights and entitlements exist on the date hereof.

“**Bruce B Floor Value**” means the value created by the Bruce B Floor determined at the relevant time in accordance with Schedule 1.

“**Bruce B Related Assets**” means Bruce B and such other assets and property of BPLP as may be used primarily for the purpose of operating and maintaining Bruce B.

“**Bruce Linked**” means, in relation to an entity undertaking a Refinancing that is not Primarily connected to either the Generator or BPLP or to the Generator and BPLP, taken together, that (a) the recourse of a lender providing such Refinancing is limited (by way of covenant or security) to a specified group of assets (which may include Intermediate Investments) 50% or more of the value of which is directly or indirectly derived from or contingent upon a Beneficial Interest in the Generator

and BPLP, taken together; or (b) 50% or more of the cashflows available to the entity to service such Refinancing is directly or indirectly derived from or contingent upon cashflows from, or which can be reasonably attributed to, a Beneficial Interest in the Generator and BPLP, taken together.

“**Business Day**” means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or the Province of Alberta or any other day on which banking institutions in Toronto, Ontario or Calgary, Alberta are not open for the transaction of business.

“**Commencement Date**” has the meaning ascribed to it in Section 9.14.

“**Confidential Information**” means all information in whatever form (whether written, oral, electronic or documentary) of a Party, as applicable, that is of a confidential or proprietary nature or otherwise not generally available to the public (including, for example, terms or information redacted from the form of this Agreement made public as agreed to by the Parties), the Technical Schedule, all information provided or obtained pursuant to the provisions of this Agreement, and all confidential information in the custody or control of a Party, whether recorded or not and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of a Party in connection with this Agreement. For greater certainty, Confidential Information shall:

- (a) include: (i) any document, electronic record, correspondence, note, extract or analysis containing, recalling or recording Confidential Information and all new information which is derived at any time from or reflects the review of any such Confidential Information described above, whether created by a Party or any third party at the request or direction of a Party and all copies and extracts thereof whether created by a Party or a third party at the request or direction of a Party; and (ii) all information that a Party is obliged, or has the discretion, not to disclose under applicable Laws and Regulations; and
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of a Party of any duty of confidentiality owed by a Party to the others or to any third party; (ii) a Party can demonstrate to have been rightfully obtained by it, without any obligation of confidence, from a third party who, to the knowledge of such Party, had the right to transfer or disclose it to the Party free of any obligation of confidence; (iii) a Party can demonstrate to have been rightfully known to or in the possession of such Party at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by a Party.

“**Corporations Tax Act**” and “**CTA**” mean the *Corporations Tax Act* (Ontario), R.S.O. 1990, c. C.40, and the regulations promulgated thereunder, as amended from time to time.

“**Counterparty**” means the Ontario Power Authority, and its successors and permitted assigns hereunder.

“**Designated Entity**” means, in respect of a TopCo, each entity that is (a) either (i) the TopCo or (ii) an Intermediate Entity of such TopCo or (iii) an Affiliate of such TopCo; and (b) either (i) Primarily connected to either the Generator or BPLP or to the Generator and BPLP, taken together; or (ii) Bruce Linked; and (c) designated by such TopCo at the relevant time as a

“Designated Entity” by notice in writing to the Counterparty, which notice may be given by such TopCo in its sole and absolute discretion. The Parties acknowledge that, on the date hereof, the Designated Entities in respect of TransCanada Corporation are TransCanada Energy Management Inc. and TransCanada Energy Investments Ltd., and the Designated Entity in respect of Ontario Municipal Employees Retirement Board is BPC Generation Infrastructure Trust. A Designated Entity designated by a TopCo shall cease to be a Designated Entity in respect of such TopCo and shall become a Non-Designated Entity at the time that such TopCo, in its sole and absolute discretion, delivers notice in writing to such effect to the Counterparty; provided, however, that such a notice shall not reduce the amount payable in respect of a Refinancing Payment otherwise determined hereunder in respect of Refinancings occurring prior to the effective date of such notice.

“**Distribution Base Case**” means the original project base case of distributions of the Generator on an after tax basis, a copy of which is attached hereto as Exhibit 3.2.

“**Downstream Investment Percentage**” and “**DIP**” mean, in respect of an entity’s Beneficial Interest in another entity, the product of the percentage Beneficial Interest of the Intermediate Investments in each Intermediate Entity in a chain through which the first entity derives a Beneficial Interest in the second entity (provided that if the first entity derives a Beneficial Interest in the second entity through one or more other chains of ownership, the DIP shall include the sum of the percentages resulting from the application of such calculation in respect of each such chain), subject to reasonable adjustment and modification to reflect the nature and entitlements of Beneficial Interests in the Intermediate Entity or Intermediate Entities that take a form other than ownership of common shares, as contemplated in Schedule 2. In determining a Downstream Investment Percentage, debt owing between Intermediate Entities shall be treated on a consolidated basis having regard to any difference in TopCo’s ultimate Beneficial Interest in such entities and to avoid duplication. On the date hereof, and assuming the issuance of an aggregate 5.2% Partnership Interest in the Generator to the Unions, the DIP of each of the TopCos in their respective Partners is 100%, the DIP of each of the TopCos in the Generator is 47.4% and the DIP of each of the TopCos in BPLP is 31.6%.

“**EBITDA**” means, for an entity in respect of a reporting period, the net consolidated income of the entity for the reporting period before interest and dividend income and distributions from subsidiaries and Affiliates, interest expense, intercompany charges, mark-ups and management fees, income taxes, depreciation and amortization, in each case as determined in accordance with GAAP and reflected in the audited consolidated financial statements of the entity for such reporting period.

“**Fair Market Value**” and “**FMV**” mean, in respect of an asset, investment or business, the amount determined by a Valuator appointed in accordance with Section 4.1(b) or by any other means specified herein that reasonably equals the monetary consideration that a prudent and informed buyer of the asset, investment or business (assuming no legal impediment to ownership and the application of the asset, investment or business to its highest and best use) would pay to a prudent and informed seller of the asset, investment or business, each acting at arm’s length with the other and under no compulsion to act, having due regard to the applicable principles and procedures set forth in Schedule 3, giving due consideration to the nature of the Transfer for which FMV is being determined, particularly having regard to whether the transaction is a sale of a Beneficial Interest in the Generator, or a sale of Generator Assets by the Generator.

“**Gain**” means the applicable portion of the financial benefit attributed to a TopCo in connection with a proposed Transfer or Refinancing, as calculated in accordance with Section 2.2 or Section 3.2, as the case may be.

“**General Partners**” means, collectively, Bruce Power Inc. and Bruce Power A Inc. and any of other Person who becomes a general partner of the Generator.

“**Generator**” means Bruce Power A L.P., and its successors and permitted assigns.

“**Generator Assets**” means Bruce A and such other assets and property of the Generator as may be used primarily for the purpose of operating and maintaining Bruce A.

“**G FMV**” has the meaning ascribed to it in Schedule 3.

“**GA FMV**” has the meaning ascribed to it in Schedule 3.

“**Implementation Agreement**” means the Bruce Power Refurbishment Implementation Agreement dated as of October 17, 2005 between BPLP, the Generator and the Ontario Power Authority, as it may be amended, amended and restated or replaced from time to time.

“**including**” means “including, without limitation,”.

“**Incurrence**” means each incurrence of a Refinancing.

“**Inter-Investor Transfer**” means a Transfer from a TopCo or an Affiliate of such TopCo to another TopCo or an Affiliate of another TopCo, in each case that does not reduce the aggregate DIP of the TopCos, taken together, in the Generator.

“**Interest Rate**” means the annual rate of interest established by the bank with which the Generator conducts day-to-day banking, from time to time, or if inapplicable, Canadian Imperial Bank of Commerce, as the interest rate it will charge for demand loans in Canadian dollars to its commercial customers in Canada and which it designates as its “prime rate” based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by such bank.

“**Intermediate Entity**” means, in respect of a TopCo, an entity (including a Partner) through which the TopCo derives a Beneficial Interest in the Generator or, if applicable, a Beneficial Interest in BPLP.

“**Intermediate Investment**” means, in respect of a TopCo, a Beneficial Interest (including a Partnership Interest) in an Intermediate Entity in respect of the TopCo.

“**Investment Grade**” means a senior, unsecured, non-credit enhanced, long term debt credit rating issued or ascribed by a nationally recognized rating agency in a rating category signifying “investment grade”. On the date hereof, Investment Grade includes a rating of or better than “BBB - ” by Standard & Poor’s, a division of The McGraw-Hill Company Inc.; “BBB (low)” by Dominion Bond Rating Service Limited; and “Baa3” by Moody’s Investor Service, Inc.

“**IRR**” means, for a specified period, the annualized internal rate of return associated with specified assets or investments determined on the basis of the cash inflows and cash outflows associated or deemed to be associated with such assets or investments during such period, in each case as specified in this Agreement. The IRR of an investment and series of returns on such investment can be calculated based on the following formula:

$NPV = 0$	=	$\sum_{t=0}$	$\frac{CF_t}{(1+IRR)^{Y(t)}}$	=	$CF_0$	+	$\frac{CF_1}{(1+IRR)^{Y(1)}}$	...	$\frac{CF_t}{(1+IRR)^{Y(t)}}$
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Where:

$CF_t$  = a specified cashflow (positive or negative) at time “t”.

IRR = the discount rate such that the net present value of all associated  $CF_t$ s will equal zero.

$Y(t)$  = the number of days from the date hereof (i.e.,  $t=0$ ) to time “t”, divided by 365.

NPV = net present value.

“**ITA**” means the *Income Tax Act* (Canada), R.S.C. 1985 (5<sup>th</sup> Supp;) c.1, and the regulations promulgated thereunder, as amended from time to time.

“**Non-Arm’s Length Refinancing**” means a Refinancing undertaken by an entity to borrow from an Affiliate of such entity.

“**Non-Arm’s Length Transfer**” means a Transfer from one entity to another entity that is an Affiliate of such entity that does not reduce the DIP of any TopCo in the Generator.

“**Non-Designated Entity**” means a TopCo or, in respect of a TopCo, an Intermediate Entity or an Affiliate of such TopCo, in each case that is not a Designated Entity.

“**Other Parties**” means the Generator and each of the TopCo’s and their respective successors and permitted assigns, and “**Other Party**” means any one of them.

“**Parties**” means the Generator, each of the TopCos and the Counterparty and their respective successors and permitted assigns, and “**Party**” means any one of them.

“**Partner**” means an entity that is a partner in the Generator and through which a TopCo holds a Beneficial Interest in the Generator that is other than a nominal economic interest held by a general partner. On the date hereof, the Partners comprise the following:

- (i) BPC Generation Infrastructure Trust; and
- (ii) TransCanada Energy Investments Ltd.

“**Partner’s Percentage Asset Interest Change**” and “**PPAIC**” mean, in respect of a Partner and a deemed sale of a Partnership Interest arising from an actual Transfer of Generator Assets, a fraction the numerator of which is the GA FMV of the Generator Assets subject to a Transfer and the denominator of which is the G FMV of the Generator at such time, which fraction shall be multiplied by 100%.

“**Partner’s Percentage Interest**” and “**PPI**” mean, at a particular time, the investment interest that a Partner (and for purposes of Section 5.1(i) and Section 9.12 only, the Unions) has in the Generator, which shall equal the percentage that the Partner’s (or a Union’s) Partnership Interest is of all Partnership Interests in the Generator at the time. On the date hereof and assuming the issuance of an aggregate 5.2% Partnership Interest in the Generator to the Unions, the PPI of each Partner in the Generator is 47.4%.

“**Partnership Interest**” means a partnership interest and any other Beneficial Interest directly in the Generator.

“**Payment Date**” has the meaning ascribed to it in Section 4.2.

“**Permitted Transfer**” means any of the following: (a) a Non-Arm’s Length Transfer; (b) the sale, assignment, transfer, conveyance or other disposition by the Generator of Bruce A to BPLP and by BPLP to OPG, taken together, in each case upon the termination of the sublease between the Generator and BPLP and the OPG Lease; and (c) a Transfer by the Generator in the ordinary course of business of assets having a Fair Market Value that, together with the Fair Market Value of other Transfers made in reliance upon this clause (c) during the most recent 12 month period, would not exceed \$2,000,000; and that does not change any TopCo’s DIP in the Generator.

“**Primarily**” means, when used to describe the degree of connection between an entity and the Generator or BPLP or the Generator and BPLP, taken together, that, for a specified reporting period, either:

- (a) 50% or more of the first entity’s EBITDA for such period was, directly or indirectly, derived from or contingent upon its Beneficial Interest in the Generator and BPLP, taken together; or
- (b) 50% or more of the first entity’s total consolidated net book value of its assets as of the last day of such period was, directly or indirectly, derived from or contingent upon its Beneficial Interest in the Generator and BPLP, taken together.

The foregoing determinations shall be made based on the information reported in the financial statements of the first entity for the period corresponding to such specified reporting period and, as required, the financial statements of any other entity through which the first entity derives its Beneficial Interest in the Generator or BPLP or the Generator and BPLP, taken together (in each case, excluding extraordinary items) or, if such other entity does not have financial statements for the specified period or if such statements do not accurately reflect such entity’s investment or interest in the specified entity or specified assets, then applicable determinations shall be based on a reasonable estimate by a senior officer of the applicable TopCo based on all information available to it and the application of GAAP applicable to such entity.

“**Refinancing**” means the issuance, incurrence or assumption of indebtedness for borrowed money and any refinancing thereof, including any extension, renewal, refunding or amendment to the amount, term, amortization or rate of interest or amount of fees or other financial compensation relating thereto, and the incurrence of obligations with respect to bankers’ acceptances and contingent reimbursement obligations relating to letters of credit and other financial instruments, and the establishment of a facility permitting same, other than any of the following which, for purposes of this Agreement, will not constitute a Refinancing or an Incurrence:

- (a) any of the following transactions undertaken by the Generator to the extent that the aggregate amount owing by the Generator thereunder does not exceed \$150,000,000:
  - (i) borrowings undertaken by the Generator in the ordinary course for working capital purposes;
  - (ii) equipment or capital leases entered into in the normal course of business by the Generator as lessee, other than leases entered into as part of a sale and leaseback transaction; and
  - (iii) indebtedness issued, incurred or assumed by the Generator to finance all or part of the cost of acquiring an asset and secured exclusively by a purchase money security interest in such asset;
- (b) Arm’s Length Refinancings undertaken by Affiliates of a TopCo which are Primarily connected to either the Generator or BPLP or to the Generator and BPLP, taken together, or are Bruce Linked, which in the aggregate for all such entities, do not exceed \$50 million at any time;
- (c) a Non-Arm’s Length Refinancing; and
- (d) for greater certainty, any Transfer (or a transaction that would be a Transfer but for the portion of the definition of Transfer commencing after the words “provided, however, that (A)”),

and, for the foregoing purposes and in relation to each Incurrence, such Incurrence shall be determined on a deemed fixed interest rate basis in respect of floating rate indebtedness, and on a deemed Canadian dollar equivalent basis in respect of non-Canadian dollar indebtedness, by reference to any floating for fixed interest rate swap and/or currency swap into Canadian dollars entered into by the Borrower in connection with, or allocated by the applicable Borrower on a commercially reasonable and good faith basis to, such indebtedness, net of the applicable period costs to the Borrower of such swap; provided that if no such swap has been entered into or can reasonably be allocable by the Borrower in respect of such floating rate or non-Canadian dollar indebtedness, such Incurrence shall be determined on a deemed fixed interest rate basis of such indebtedness and on a deemed Canadian dollar equivalent basis by reference to the fixed interest rate and Canadian dollar exchange rate that would have been available to the Borrower had the Borrower entered into, on a commercially reasonable and good faith basis, a floating for fixed interest rate swap and/or currency swap into Canadian dollars in connection with such indebtedness, net (without duplication) of the applicable period costs to the Borrower of such swap, based on indicative quotes

for such a swap obtained in good faith from appropriate market participants at the time of such Refinancing.

“**Refinancing Payment**” has the meaning ascribed to it in Section 3.2(c).

“**Restricted Entity**” means any of:

- (a) the Generator;
- (b) a Partner; or
- (c) a Designated Entity.

“**Senior Conference**” has the meaning ascribed to it in Section 9.1.

“**Statement**” means a detailed written statement delivered by a TopCo pursuant to Section 2.2(g) or Section 3.2(d).

“**Tax Ruling**” means an advance income tax ruling from the Canada Revenue Agency in form and substance satisfactory to each of the Generator and BPLP and their respective limited partners, acting reasonably, in respect of the proposed transactions described in the Tax Ruling Application.

“**Technical Schedule**” means that certain schedule of technical information dated the date of this Agreement and delivered to the Counterparty by the Other Parties.

“**Term**” has the meaning ascribed to it in Section 7.1(a).

“**TopCo**” means each of (a) Ontario Municipal Employees Retirement Board and its successors, and (b) TransCanada Corporation and its successors, in each case for so long as it has a DIP in the Generator greater than 0.

“**Transfer**” means, by an entity in relation to specified assets or investments, directly or indirectly, (a) a sale, assignment, transfer, conveyance or other disposition by the entity of all or part of its Beneficial Interest in the specified assets or investments to another entity, or (b) a transaction or series of transactions under which the entity shifts all or part of the economic risk and/or economic return associated with the specified assets or investments to another entity without transferring its legal or beneficial ownership of such specified assets or investments. For greater certainty, but without limitation, a Transfer would include any transaction by an entity that involves: (i) a monetization of the specified assets or investments that shifts all or part of the economic risk and/or economic return associated with the specified assets or investments to any other entity; (ii) a securitization of or in respect of some or all of the cashflows or revenues derived from the specified assets or investments, (iii) a lease by the entity of some or all of the property comprising the specified assets or investments, (iv) a grant of a royalty interest or a concession relating to all or part of the specified assets or investments, (v) the declaration of a trust for the benefit of another entity in or in respect of the specified assets or investments, (vi) the issuance of equity securities of or interests in the entity, (vii) a sale, grant or other disposition of a participating interest in the entity, (viii) a reorganization, consolidation, recapitalization, merger or amalgamation of the entity or (ix) any other transaction or series of transactions which has or have an analogous effect to the

foregoing; provided, however, that (A) the issuance of equity securities of or interests in an entity shall not be considered to be a Transfer or deemed sale by a Partner for the purposes of this Agreement if and so long as after giving effect to such issuance the aggregate DIP of the Partners and the Unions, taken together, in the Generator has not been reduced, provided, however, that the sum of the DIPs of the Unions in the Generator does not exceed 15% in the aggregate as a consequence thereof, and (B) the transactions referred to in Section 2.6 shall not be considered to be a Transfer or deemed sale. “Transfer” shall also be deemed not to include any sale of production by the Generator in the ordinary course of its business including sales of electricity, hot water and steam by the Generator.

“**Transfer Payment**” has the meaning ascribed to it in Section 2.2(f).

“**Transferee**” means, in respect of a particular Transfer, the applicable transferee of the assets or investments subject to such Transfer.

“**Transferor**” means, in respect of a particular Transfer, the applicable transferor of the assets or investments subject to such Transfer.

“**Unions**” means, collectively, the Power Worker’s Union Trust No. 1 and its successors and The Society of Energy Professionals Trust and its successors.

“**Valuator**” means a recognized investment bank or accounting firm with recognized valuation credentials that is independent of the Parties and which has experience in valuing electrical power generation businesses and which is appointed pursuant to Section 4.1(b) to make one or more of the calculations, determinations and/or valuations in this Agreement.

## **1.2 Schedules and Exhibits**

The following schedules and exhibits are attached to and form part of this Agreement:

Schedule 1	Determination of Bruce B Floor Value
Schedule 2	Adjustments for CPI
Schedule 3	Principles and Procedures to Determine Fair Market Value
Schedule 4	Methodology to Determine IRR in Respect of Transfers
Exhibit 1.1	Form of Attestation Certificate
Exhibit 2.3	Sample Calculations – Transfers and Refinancings
Exhibit 3.2	Distribution Base Case
Exhibit 9.2	Arbitration Rules

## **1.3 Headings and Table of Contents**

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. The words “hereof”, “hereto”,

“hereunder” and similar expressions mean and refer to this Agreement and not any particular article, section, paragraph, subparagraph, clause or subclause; and the expression “Schedule”, “Exhibit”, “Article”, “Section”, “paragraph”, “subparagraph”, “clause” or “subclause” followed by a letter or a number means and refers to the specified schedule, exhibit, article, section, paragraph, subparagraph, clause or subclause, respectively, of this Agreement.

## **1.5 Currency**

All currency amounts in this Agreement are stated and shall be paid in Canadian dollars, unless otherwise specified. All references to “**dollar**”, “**dollars**” or “**\$**”, are references to the lawful money of Canada, unless otherwise specified.

## **1.6 Laws and Regulations**

Unless otherwise specified, any reference in this Agreement to any statute includes every regulation made thereunder and any reference in this Agreement to any law and regulation shall be a reference to such law and regulation as amended, re-enacted or replaced from time to time. Without limiting the generality of the foregoing, any reference herein to a particular provision or part of the ITA or similar legislation of any province or territory in Canada will include a reference to that provision or part as it may be renumbered or amended from time to time and any successor provision or part or any renumbering or amendment thereof. Except where the ITA is referred to together with the tax legislation of a particular province or territory, all references to the ITA shall be deemed to include a reference to any applicable income tax legislation of a province or territory in Canada and all references to a provision of the ITA shall be deemed to include a reference to any equivalent provision under the applicable income tax legislation of a province or territory in Canada.

## **1.7 Entire Agreement**

This Agreement, together with any agreements and other documents required to be delivered pursuant to this Agreement, shall constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made, prior to the Commencement Date, by a Party to this Agreement, or its directors, officers, employees or agents, to another Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

## **1.8 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

## **1.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **1.10 Preparation of Agreement**

The terms and conditions of this Agreement are the result of negotiations between the Parties who acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against or in favour of any Party when interpreting such term or provision by reason of the extent that a Party or its legal and other professional advisors participated in the preparation of this Agreement.

## **1.11 Cumulative Effect of Calculations**

The Parties acknowledge that the calculations and payments contemplated by this Agreement on a day in respect of the incremental economic effect of Transfers and Refinancings (both positive and negative effects) are intended to take into account the consequences of each earlier Transfer and Refinancing, in each case without duplication and so that, subject to any applicable assumptions herein and any specific terms hereof, the cumulative effect of all such earlier transactions are fairly reflected in the valuation of the actual or anticipated costs and benefits, directly or indirectly, of all such Transfers and Refinancings, taken together, to the TopCo on the basis contemplated herein.

## **1.12 Calculations, Determinations and Valuations**

If a calculation, determination or valuation hereunder requires a Person making such calculation, determination or valuation to apply mathematical, financial, accounting or valuation principles, or to exercise judgement, in order to fairly calculate and reflect, on the basis contemplated herein, the imputed benefits of a Refinancing, a Transfer, or a series of Transfers and/or Refinancings to a TopCo, or to determine the allocable portion of such benefits payable by the TopCo to the Counterparty, then such Person shall apply such principles, make such judgements and, as necessary, exercise any discretion, reasonably, in good faith and in a manner that, in its opinion, acting reasonably, achieves the objectives hereof, in each case having regard to such surrounding circumstances as such Person reasonably considers relevant in connection therewith and to the economic consequences to the Parties resulting therefrom.

# **ARTICLE 2 TRANSFERS**

## **2.1 Transfer Restrictions**

The Generator shall not undertake, agree to, permit or give effect to, any Transfer in respect of the Generator Assets (including, for greater certainty, any transaction in relation to the Generator contemplated in clauses (i) to (ix) of the definition of "Transfer"), and each TopCo shall not undertake, agree to, permit or give effect to, any Transfer or cause or permit any Intermediate Entity in which it has a direct or indirect Beneficial Interest (including for greater certainty any general partner of the Generator, even if the general partner's economic interest is nominal, other than Bruce Power Inc. ceasing to be a general partner of the Generator or transferring its partnership interest in

the Generator to Bruce Power A Inc.), to undertake, agree to, permit or give effect to, any Transfer of an Intermediate Investment or any Transfer of a Beneficial Interest in the Generator, as applicable, in each case (except for a Permitted Transfer (it being agreed that the applicable TopCo shall provide prompt written notice of each Permitted Transfer to the Counterparty in respect of such Permitted Transfer)) unless such Transfer is a Transfer effected in compliance with the following conditions:

- (a) in the case of a Transfer proposed to become effective prior to January 1, 2012 other than an Inter-Investor Transfer, the prior written consent of the Counterparty has been obtained, which consent may be unreasonably and arbitrarily withheld;
- (b) in the case of any Transfer proposed to become effective on or after January 1, 2012 other than an Inter-Investor Transfer, there is not or would not be at the effective time of the Transfer a Generator Event of Default that is continuing, unless the prior written consent of the Counterparty has been obtained, which consent shall not be unreasonably withheld; and
- (c) in the case of any Inter-Investor Transfer proposed to become effective prior to January 1, 2012 and any Transfer proposed to become effective on or after January 1, 2012 that is not subject to Section 2.1(b), prior written notice thereof has been delivered to the Counterparty,

and, in each of the circumstances described in Sections 2.1(a), (b) and (c) (other than, for greater certainty, a Permitted Transfer), as a condition to the completion of the proposed Transfer, the applicable TopCo shall pay, or cause the applicable Intermediate Entity or the Generator to pay, the Counterparty on the applicable Payment Date the Transfer Payment specified in Section 2.2, if any, and shall provide the Counterparty with written confirmation, satisfactory to the Counterparty, acting reasonably, that (i) all consents, licenses, permits and other approvals of each Governmental Authority necessary to give effect to such Transfer have been obtained (including from the CNSC); (ii) the Transferee shall have agreed in favour of the applicable TopCo to permit the TopCo access to such information relating to the Transferee and any intermediate entities through which the Transferee would hold its Beneficial Interest in the Generator necessary to make the determinations required hereby from time to time; and (iii) other than in respect of an Inter-Investor Transfer, the Generator, the Transferee or its ultimate parent is then rated by two or more nationally recognized rating agencies at least one notch above the lowest rating that is Investment Grade issued by the applicable rating agency (on the date hereof, for example, a credit rating of “BBB” Standard & Poor’s, a division of The McGraw-Hill Company, Inc., “BBB” by Dominion Bond Rating Service and “Baa2” by Moody’s Investor Service, Inc., would be an acceptable credit rating for a Transferee or its ultimate parent). For greater certainty, a change of Control of a TopCo or a sale, assignment, transfer, conveyance or other disposition of an equity interest in a TopCo shall not be considered to be a Transfer subject to the foregoing restriction provided that the obligations of such TopCo hereunder shall continue unaffected thereafter. Permitted Transfers and Inter-Investor Transfers are not subject to the requirements of clauses (i), (ii) and (iii) above.

## **2.2 Transfer Payments**

The Transfer Payment payable to the Counterparty pursuant to Section 2.1 in connection with any Transfer by a TopCo or by an Intermediate Entity of such TopCo of or in respect of a Beneficial

Interest in the Generator, or any Transfer by the Generator of or in respect of Generator Assets or having the effect of changing a TopCo's DIP in the Generator (including, for greater certainty, any transaction contemplated in clauses (i) to (ix) of the definition of "Transfer") (other than a Permitted Transfer) shall be calculated as follows:

- (a) the TopCo shall estimate the G FMV (and, if the Transfer is a sale of some or all of the Generator Assets by the Generator, the GA FMV subject to such Transfer) immediately prior to the Transfer;
- (b) the TopCo shall determine the PPI immediately prior to the Transfer;
- (c) the TopCo shall determine the IRR in accordance with Schedule 4 that would be associated with a deemed sale of its Partnership Interest by such TopCo's Partner for deemed proceeds as determined in accordance with Schedule 4;
- (d) the TopCo shall calculate the amount that would be its Partner's Gain in relation to the deemed sale described in paragraph (c) as the amount, if any, that would need to be subtracted from the "Transfer Net Proceeds of a Partner" determined in accordance with Schedule 4 in order to reduce the IRR associated with such deemed sale to 20%;
- (e) the TopCo shall calculate, as applicable, the change in its DIP in such Partner, or the change in such Partner's PPI in the Generator, or such Partner's PPAIC, that will occur on the date of the Transfer as a result of such Transfer;
- (f) the TopCo shall calculate 50% of the product of (A) the amount, if any, determined in paragraph (d) and (B) the percentage change in DIP in the Partner, the percentage change in PPI, or the PPAIC, as applicable, in paragraph (e) (such product being the "**Transfer Payment**");
- (g) as soon as reasonably practicable but not later than 30 days after the effective date of the Transfer, the TopCo shall deliver to the Counterparty a detailed statement setting forth the basis for the determinations and calculations described in paragraphs (a) to (f), in reasonable detail and with such related information as may be reasonably necessary to enable the Counterparty (including its advisors) to independently confirm the basis, accuracy and fairness of the determinations and calculations; the TopCo shall also deliver, if applicable, an update of such statement within such 30 day period if further information becomes available which is relevant to such determinations and calculations;
- (h) the Counterparty shall review the determinations and calculations described in paragraphs (a) to (f) in order to determine if, in its opinion acting reasonably, the determinations and calculations are fair and accurate and, if it agrees, it shall so confirm by written notice to the TopCo;
- (i) unless the Counterparty delivers written notice to the TopCo of its conclusion that there is a reasonable basis to question the fairness and/or accuracy of any of the calculations and determinations described in paragraphs (a) to (f) as soon as

reasonably practicable but no later than 75 days after the latest date of delivery of the detailed statement and related information described in paragraph (g), such calculations and determinations and, if applicable, the determination of the amount of the Transfer Payment, shall, subject to Section 4.6, be deemed to be accepted; and

- (j) if the Counterparty delivers a notice described in paragraph (i) to the TopCo, the Transfer Payment associated with the Transfer payable pursuant to Section 2.1 shall be the amount determined by a Valuator appointed pursuant to Section 4.1(b) as the amount that would properly and fairly result from the calculations and determinations described in paragraphs (a) to (f), as set forth in a written report of the Valuator delivered by it to the Counterparty and the TopCo;

provided, however, that the Parties agree that in applying the foregoing provisions in connection with a second or subsequent Transfers or Refinancings, the order of application of paragraphs (a) through (f) may require modification in order to take proper account of earlier Transfers or Refinancings on a basis that is consistent with the intentions expressed in Section 1.11.

### **2.3 Determination of IRR and Sample Calculations**

All IRR calculations required to be made pursuant to Section 2.2 shall be made in accordance with the applicable principles and procedures set forth in Schedule 4. The sample calculations set out in Exhibit 2.3 relating to the calculations, determinations and payments contemplated by this Article 2 are for purposes of illustration only. Any Party may propose additional sample calculations which, if agreed to by all Parties, acting reasonably, will be added to Exhibit 2.3.

### **2.4 Other Transfers**

If a Transfer by the Generator or an Intermediate Entity is undertaken by way of an issuance of Beneficial Interests to third parties or by way of any corporate reorganization that has the effect of reducing a related TopCo's DIP in the Generator, the provisions of Section 2.2 shall be applied in respect of such Transfer on the basis contemplated in Section 2.2 and Schedule 4, and a Transfer Payment shall be made, subject to such modifications to the calculations, net proceeds, IRR calculations, and to the amount of any Transfer Payment, in each case as may be reasonably necessary to address the form and economic substance of such Transfer, the nature of any consideration paid in connection therewith, and the overall reduction in the Generator's Beneficial Interest in the Generator Assets or TopCo's DIP in the Generator, as applicable, resulting from the Transfer, in determining any related Gain resulting from the Transfer and making any payment required hereunder in connection therewith.

### **2.5 Changes in Structure**

Without limiting Section 2.1, the Generator and each TopCo shall not directly or indirectly undertake, agree to, permit or give effect to, any of the following transactions unless the Parties acting reasonably and in good faith have agreed to adjustments to the calculations, determinations and payments provided for in this Agreement in order to properly and fairly reflect the consequences thereof hereunder:

- (a) the acquisition or holding by the Generator of assets or property other than Generator Assets;
- (b) a financing of BPLP in respect of assets other than the Bruce B Related Assets;
- (c) the creation or holding of Partnership Interests in which the general partners of the Generator (including the General Partners) would have more than a 0.1% Beneficial Interest in the aggregate in the Generator;
- (d) the replacement of either or both General Partners of the Generator with one or more general partners that are not controlled by either or both TopCos;
- (e) the holding of a TopCo's Beneficial Interest in the Generator through more than one limited partner in the Generator;
- (f) the holding of a TopCo's Beneficial Interest in BPLP through more than one limited partner in BPLP; or
- (g) any other transaction the TopCo reasonably determines would give rise to problems in the interpretation and implementation of this Agreement, having regard to the objective of making payment to the Counterparty of the applicable portion of any Gain resulting from a Transfer or Refinancing.

The Counterparty acknowledges that either of the TopCos and the Generator, acting together, may propose one or more such transactions in the future that would not have the effect of changing a TopCo's DIP in the Generator or Beneficial Interest in the Generator Assets. In such circumstances, and provided no other transaction is to take place in connection with such proposed transaction which is restricted by Section 2.1, the Counterparty and each other Party hereto, shall consider in good faith, acting reasonably, any proposal by the Generator, BPLP (with respect to (b) above only), or a TopCo, in respect of adjustments to the calculations, determinations and payments provided for herein. The reasonable costs of the Counterparty in connection therewith shall be borne by the Party making such proposal.

## **2.6 Issuance to Unions**

Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that the Generator will be issuing an initial 5.2% Partnership Interest in the Generator to the Unions in carrying out the transactions contemplated in the Tax Ruling and that none of such issuance or transactions shall be considered a Transfer or Refinancing for purposes of this Agreement.

## **ARTICLE 3 REFINANCING**

### **3.1 Attributed Incurrences**

- (a) An Incurrence under a Refinancing shall be attributed to a TopCo's Partner in the amount determined in accordance with Section 3.1(b), for the purposes of Section 3.2, if:

- (i) the Refinancing is undertaken by the Generator or BPLP; or
- (ii) the Refinancing is undertaken by a Designated Entity in respect of such TopCo (including a Partner) that is, at the time of the Incurrence, (A) Primarily connected to either the Generator or BPLP or to the Generator and BPLP, taken together, or (B) Bruce Linked,

but in any case referred to in (ii) above only if such Refinancing involves, directly or indirectly, one or more of the following given in favour of the Person or Persons providing or lending such Refinancing or any Affiliate of such Person or Persons:

- (A) a grant of a security interest, mortgage or charge over the ownership of a Restricted Entity or the assets of a Restricted Entity;
  - (B) a pledge or assignment of all or any part of the cashflows from or payable to a Restricted Entity;
  - (C) a guarantee, indemnity or other support of the obligations of such Designated Entity by a Restricted Entity;
  - (D) a covenant or covenants or other written assurances or comfort by a Non-Designated Entity that a Restricted Entity controlled by it will not incur indebtedness for borrowed money or will not grant a security interest over all or any portion of its assets; and
  - (E) a covenant or covenants or other written assurances or comfort by a Restricted Entity not to incur indebtedness for borrowed money or not to grant a security interest over all or any portion of its assets.
- (b) The amount of an Incurrence subject to attribution under Section 3.1(a) that shall be attributed to the applicable Partner of a TopCo for the purposes of Section 3.2 shall be determined, without duplication, as follows:
- (i) if the Refinancing is undertaken or guaranteed (other than in relation to a Refinancing undertaken by a Designated Entity referred to in paragraph (iii) below) by the Generator, the amount of the Incurrence shall be deemed for attribution purposes to be the product of (A) the amount of the Incurrence, and (B) the Partner's PPI in the Generator as of the time of the Incurrence, and all borrowings and payments (including in respect of interest, principal and premiums, if any), made or to be made in respect of the Incurrence shall be attributed to such Partner based on such PPI;
  - (ii) if the Refinancing is undertaken or guaranteed (other than in relation to a Refinancing undertaken by a Designated Entity referred to in paragraph (iii) below) by BPLP, the amount of the Incurrence shall be deemed for attribution purposes to be the product of (A) the amount, if any, by which the principal amount of the actual Incurrence together with the total outstanding principal amount of all prior Incurrences by BPLP exceeds \$300 million as of

the time of the Incurrence, and (B) the TopCo's DIP in BPLP as at the time of the Incurrence, and all borrowings and payments (including in respect of interest, principal and premiums, if any), made or to be made in respect of the actual Incurrence shall be attributed to such Partner based on the proportion that the product so calculated is of the actual Incurrence;

- (iii) if the Refinancing is undertaken or guaranteed (other than in relation to a Refinancing undertaken by another Designated Entity, the Generator or BPLP) by a Designated Entity of such TopCo, the amount of such Incurrence shall be deemed to be attributed to such Partner, and all borrowings and payments (including in respect of interest, principal and premiums, if any), made or to be made in respect of the actual Incurrence shall be attributed to the Partner.
- (c) If an Incurrence permits the Borrower to delay a repayment date or the maturity date in respect of an Incurrence, for the purposes of attributing the Incurrence the repayment of borrowings shall be deemed to take place on the latest scheduled repayment date permitted under the Refinancing.

### **3.2 Calculation of Refinancing Payments**

Each TopCo shall pay, or cause to be paid to, the Counterparty on the applicable Payment Date the amount of any Refinancing Payment determined in accordance with the following provisions in respect of each Incurrence that is attributed to the Partner of such TopCo pursuant to Section 3.1:

- (a) the TopCo shall calculate the IRR associated with any Incurrence undertaken by a Partner, or attributed Incurrence pursuant to Section 3.1, based on (A) the Partner's Adjusted Distribution Base Case immediately prior to such Incurrence, plus (B) the attributed cash inflows (which shall be deemed for such purpose to be available to the Generator but adjusted by the Partner's PPI) from the Incurrence (including the amount of actual borrowings in respect of the Incurrence), minus (C) the attributed cash outflows (which shall be deemed for such purpose to be payments made by the Generator but adjusted by the Partner's PPI) in connection with the Incurrence (including in respect of the repayment of principal and the payment of interest, fees, costs and any premium); for purposes of the foregoing, cash inflows shall include principal associated with such Incurrence and reduction of deemed tax (calculated using the same rate as is used in determining the Partner's Adjusted Distribution Base Case immediately prior to such Incurrence) as a result of the deduction of interest, fees, costs and any premium which are deductible for purposes of the ITA and the CTA and cash outflows shall include interest, repayment of principal, fees, costs and any premium associated with such Incurrence, in each case imputed for purposes of the IRR calculation, as of the date of actual receipt or payment;
- (b) the TopCo shall calculate the Gain associated with the Incurrence as the amount, if any, that would need to be subtracted from the cash inflow on the date of the Incurrence in order to reduce the IRR calculated on the basis described in (a) to 20%, which Gain shall be deemed to be attributed to the Partner of such TopCo;

- (c) each TopCo shall calculate an amount equal to 50% of the Gain attributed to its Partner pursuant to paragraph (b) multiplied by the Downstream Investment Percentage of such TopCo in the Partner (such amount being the “**Refinancing Payment**”);
- (d) as soon as reasonably practicable but not later than 30 days after the effective date of the Incurrence, such TopCo’s Partner shall deliver to the Counterparty a detailed statement setting forth the basis for the determinations and calculations described in paragraphs (a) to (c), in reasonable detail and with such related information as may be reasonably necessary to enable the Counterparty (including its advisors) to independently confirm the basis, accuracy and fairness of the determinations and calculations;
- (e) the Counterparty shall review the determinations and calculations described in paragraphs (a) to (c) in order to determine if, in its opinion acting reasonably, the determinations and calculations are fair and accurate and, if it agrees, it shall so confirm by written notice to the TopCo;
- (f) unless the Counterparty delivers written notice to a TopCo of its conclusion that there is a reasonable basis to question the fairness and/or accuracy of any of the calculations and determinations described in paragraphs (a) to (c) as soon as reasonably practical but no later than 75 days after the date of delivery of the detailed statement and related information described in paragraph (d), such calculations and determinations and, if applicable, the determination of the amount of the Refinancing Payment, shall, subject to Section 4.6, be deemed to be accepted; and
- (g) if the Counterparty delivers a notice described in paragraph (f) to a TopCo, the Refinancing Payment associated with the Incurrence payable pursuant to this Section 3.2 shall be the amount determined by a Valuator appointed pursuant to Section 4.1(b) as the amount that would properly and fairly result from the calculations and determinations described in paragraphs (a) to (c), as set forth in a written report of the Valuator delivered by it to the Counterparty and the applicable TopCo.

### **3.3 Sample Calculations**

The sample calculations set out in Exhibit 2.3 relating to the principles set forth in this Article 3 are for purposes of illustration only. Any Party may propose additional sample calculations which, if agreed to by all Parties, acting reasonably, will be added to Exhibit 2.3.

### **3.4 No Consent Required**

No consent of the Counterparty shall be required in respect of any Incurrence or Refinancing.

### **3.5 Negative Covenant – Refinancings by Non-Designated Entities**

No TopCo shall permit a Non-Designated Entity of such TopCo which is either (i) Primarily connected to the Generator and BPLP, taken together, or (ii) Bruce Linked, to enter into a

Refinancing unless the prior written consent of the Counterparty has been obtained, which consent may be unreasonably and arbitrarily withheld.

## **ARTICLE 4 STATEMENTS AND PAYMENTS**

### **4.1 Determinations and Calculations**

- (a) Fair Market Value – Fair Market Value where required to be determined herein shall be determined based on the principles and procedures set forth in Schedule 3.
- (b) Appointment of a Valuator – If required, a Valuator shall be identified and appointed in the manner and on the basis set forth in Schedule 3.
- (c) Information – If requested, each TopCo and the Generator shall provide the Counterparty with copies of all relevant material documentation relating to a related Transfer or Refinancing, together with such other information relating thereto as may be requested by the Counterparty, acting reasonably. A Statement may be delivered by the applicable Party to the Counterparty by facsimile or electronic means. The Counterparty may, acting reasonably, audit at any time, whether before, during or after a Transfer or Refinancing (but no later than two years after the end of the Contract Year in which such Statement was issued), such Transfer or Refinancing, including the documentation, determinations, calculations and valuations relating thereto. Each Statement delivered hereunder shall be accompanied by an Attestation Certificate relating to the calculations, determinations and information set forth therein or accompanied therewith.

### **4.2 Payment**

Any Transfer Payment or Refinancing Payment payable to the Counterparty pursuant hereto shall be paid to the Counterparty in full no later than the date (the “**Payment Date**”) of delivery of the applicable calculation statement, as described in Section 2.2 or 3.2. Any and all payments required to be made pursuant hereto shall be made by wire transfer to the account designated in Section 4.5 or as otherwise agreed by such TopCo and the Counterparty.

### **4.3 Interest**

The Party owing a Transfer Payment or Refinancing Payment shall pay interest on any late payment to the Counterparty from the Payment Date to the date of payment thereof. The interest rate applicable to such late payment shall be the Interest Rate plus 2%, calculated daily and compounded monthly. Under no circumstances shall any payment of interest pursuant to any provision of this Agreement result in a receipt by a Party of interest at a criminal rate as construed by the *Criminal Code* (Canada) and any such payment of interest shall be redetermined using the highest rate of interest which is not prohibited by the *Criminal Code* (Canada).

#### **4.4 Interest Rate Equivalency**

For the purposes of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement (which is to be calculated on any basis other than a full calendar year) is equivalent may be determined by multiplying such rate by a fraction, where the numerator is the actual number of days in the calendar year during the period the yearly rate of interest is to be ascertained and the denominator is the number of days interest is to be paid.

#### **4.5 Payment Account Information**

Reference is made to Section 4.5 of the Technical Schedule.

The Counterparty may change its account information listed in Section 4.5 of the Technical Schedule from time to time by written notice to the other Parties in accordance with Section 8.2.

#### **4.6 Adjustment to Statement**

Each Statement shall be subject to adjustment for errors in arithmetic, computation or other errors raised by a Party during the period of two (2) years following the end of the Contract Year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such two (2) year period.

#### **4.7 Disputed Statement**

If the Counterparty disputes a Statement or any portion thereof in good faith, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay any amount not in dispute to the Counterparty. The Counterparty shall provide written notice to the applicable Party setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the applicable Party will promptly (and, in any event, within ten (10) Business Days) prepare and deliver a revised Statement to the Counterparty. Any overpayment or underpayment of a Statement shall bear interest at the Interest Rate plus 2%, calculated daily and compounded monthly, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10<sup>th</sup>) Business Day following the date on which the revised Statement is delivered to the Counterparty. If a Statement dispute has not been resolved between the relevant Parties within five (5) Business Days after receipt of written notice of such dispute by the relevant Party, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 9.1 and thereafter to formal dispute resolution in accordance with the terms of Section 9.2.

#### **4.8 Statements and Payment Records**

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and any payment made thereunder in accordance with Section 8.1.

## **ARTICLE 5 REPRESENTATIONS**

### **5.1 Representations of the Generator and the TopCo's**

Each Party other than the Counterparty represents to the Counterparty on a several basis only (and in respect of itself, only and in respect of its Partner, only if it is the TopCo of such Partner) as follows, and acknowledges that the Counterparty is relying on such representations in entering into this Agreement:

- (a) In respect of the Generator, is a limited partnership existing under the laws of the Province of Ontario, in respect of the Ontario Municipal Employees Retirement Board, is a pension plan registered under the laws of Ontario, and in respect of TransCanada Corporation, is a corporation incorporated under the laws of Canada.
- (b) It is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (c) This Agreement has been duly authorized, executed and delivered by such Party and is a valid and binding obligation of such Party enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted solely in the discretion of a court of competent jurisdiction.
- (d) The execution and delivery of this Agreement by it and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of such Party under:
  - (i) any contract or obligation to which it is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
  - (ii) its constitutional or constating documents, as applicable;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the Generator;  
or
  - (v) any Laws and Regulations;that could have a material adverse effect on such Party.

- (e) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by such Party or, to the knowledge of such Party, threatened against such Party.
- (f) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of such Party, threatened against such Party, that could have a Material Adverse Effect on such Party.
- (g) All requirements for such Party to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (h) It is not, and each of the Partners is not, a non-resident of Canada for the purposes of the ITA.
- (i) The Partners and the Unions comprise all the partners of the Generator. The PPI of the Partners and the Unions in the Generator is as follows:
  - (i) BPC Generation Infrastructure Trust: 47.4%;
  - (ii) TransCanada Energy Investments Ltd.: 47.4%;
  - (iii) Power Worker's Union Trust No. 1: 4.0%; and
  - (iv) Society of Energy Professionals Trust: 1.2%.
- (j) The DIP of the TopCo's in the Generator is as follows:
  - (i) Ontario Municipal Employees Retirement Board: 47.4%; and
  - (ii) TransCanada Corporation: 47.4%.

## **5.2 Representations of the Counterparty**

The Counterparty represents to each other Party as follows, and acknowledges that each of the other Parties hereto is relying on such representations in entering into this Agreement:

- (a) The Counterparty is a corporation without share capital existing under the Electricity Act and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Counterparty and is a valid and binding obligation of the Counterparty enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that

equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Counterparty and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Counterparty under:
- (i) any contract or obligation to which the Counterparty is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
  - (ii) the constating documents, by-laws or resolutions of the directors (or any committee thereof) of the Counterparty;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the Counterparty; or
  - (v) any Laws and Regulations;

that could have a Material Adverse Effect on the Counterparty.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Counterparty or, to the knowledge of the Counterparty, threatened against the Counterparty.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Counterparty, threatened against the Counterparty, that could have a Material Adverse Effect on the Counterparty.
- (f) All requirements for the Counterparty to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied, including without limiting the generality of the foregoing, the receipt by the Counterparty of a direction from the Minister of Energy contemplated by subsections 25.32(4) and (7) of the Electricity Act directing the Counterparty to execute and deliver this Agreement in respect of the initiative to increase long-term Electricity supply initiated by the Ministry of Energy, on behalf of the Government of Ontario.
- (g) The Counterparty is registered for GST purposes under the ETA and its GST registration number is 854195039RT.

- (h) The Counterparty is not a non-resident of Canada as provided for under the ITA.
- (i) This Agreement complies with the regulations made pursuant to the Electricity Act.

### **5.3 Effective Date of Representations**

The representations of the Parties contained in Sections 5.1 and 5.2 are made with effect on the Commencement Date only.

## **ARTICLE 6 CONFIDENTIALITY AND FIPPA**

### **6.1 Counterparty Confidential Information**

From the date of this Agreement to and following the expiry of the Term:

- (a) each Other Party shall keep all Confidential Information of the Counterparty confidential and secure; provided, however, each Other Party may disclose Confidential Information of the Counterparty in confidence to:
  - (i) those employees, directors, officers, agents, representatives or advisors of such Other Party, of any Affiliate of such Other Party, of its general partner, of any Limited Partner or, of the direct and indirect shareholders that control any Limited Partner, in each case, as applicable;
  - (ii) the respective lenders of such Other Party, of any Limited Partner or, of the direct and indirect shareholders that control any Limited Partner and their respective employees, directors, officers, agents, representatives and advisors; and
  - (iii) any bona fide potential investors in such Other Party and their respective employees, directors, officers, agents, representatives or advisors;
  - (iv) who in each of the foregoing cases have a need to know it, have acknowledged that the Confidential Information of the Counterparty is confidential and have agreed to non-disclosure of such Confidential Information on terms substantially similar to those contained in this Agreement; and
  - (v) to any Governmental Authority, stock exchange or other Person if legally compelled by such Governmental Authority or stock exchange under any Laws and Regulations or the requirements of any stock exchange; and
- (b) except as necessary for the purpose of complying with its obligations under this Agreement, each Other Party shall not directly or indirectly exploit or use any Confidential Information of the Counterparty.

## **6.2 Confidential Information**

From the date of this Agreement to and following the expiry of the Term:

- (a) the Counterparty shall keep all Confidential Information of each Other Party confidential and secure; provided, however, that the Counterparty may disclose Confidential Information of each Other Party in confidence to:
  - (i) those employees, directors, officers, agents, representatives or advisors of the Counterparty and its respective Affiliates who in each case have a need to know it, have acknowledged being advised that the Confidential Information of such Other Party is confidential or highly confidential and have agreed to non-disclosure of such Confidential Information on terms substantially similar to those contained in this Agreement and, specifically in the cases of the Ministry of Energy and the Ontario Financing Authority, have acknowledged and agreed to the provisions of Section 6.5 insofar as that section relates to FIPPA but not subsection 25.13(3) of the Electricity Act, which applies solely to the Counterparty;
  - (ii) the Ministry of Energy and the Ontario Financing Authority; and
  - (iii) any Governmental Authority if legally compelled by such Governmental Authority under any Laws and Regulations; and
- (b) except as necessary for the purpose of complying with its obligations under this Agreement, the Counterparty shall not directly or indirectly exploit or use any Confidential Information of such Other Party, or any of them.

## **6.3 Injunctive and Other Relief**

Each Party acknowledges that a breach of any provisions of this Article 6 will cause irreparable harm to another Party or to any third party to whom such Party owes a duty of confidence and in respect of each Other Party, may also prejudice significantly such Other Party's competitive position, interfere significantly with such Other Party's contractual or other negotiations, or otherwise result in undue loss to such Other Party, and that the injury to the Party or to any third party may be difficult to calculate and inadequately compensable in damages. To the extent applicable to the Counterparty and for each Other Party, each Party agrees that each other Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article.

## **6.4 Notice and Protective Order**

- (a) If an Other Party, or any of them, any Affiliate of such Other Party, its general partner(s), its Limited Partners and the shareholders that directly or indirectly control any Limited Partner, or to its knowledge any of their respective directors, officers, employees, agents, representatives or advisors, as applicable, become legally compelled to disclose any Confidential Information of the Counterparty, such Other Party will provide the Counterparty with prompt notice to that effect in order to allow

the Counterparty to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Counterparty and its legal counsel to the fullest extent at the Counterparty's cost and expense. If such protective orders or other remedies are not obtained, such Other Party will disclose or cause such other Person to disclose, only that portion of the Confidential Information of the Counterparty which such Other Party or such Person is legally compelled to disclose, only to such Person or Persons to which such Other Party or such Person is legally compelled to disclose, and such Other Party shall provide notice to each such recipient (in co-operation with legal counsel for the Counterparty) that such Confidential Information of the Counterparty is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if practicable, shall obtain each recipient's written agreement to receive and use such Confidential Information of the Counterparty subject to those terms and conditions.

- (b) If the Counterparty, any Affiliate of the Counterparty, or any of their respective directors, officers, employees, agents, representatives or advisors or, to the knowledge of the Counterparty, the Ministry of Energy or the Ontario Financing Authority, become legally compelled to disclose any Confidential Information of an Other Party (or any of them), the Counterparty will provide such Other Party with prompt notice to that effect in order to allow such Other Party to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with such Other Party and its legal counsel to the fullest extent at such Other Party's cost and expense. If such protective orders or other remedies are not obtained, the Counterparty will disclose, or cause such Person to disclose (or, in the case of the Ministry of Energy and the Ontario Financing Authority, request that such Persons disclose), only that portion of Confidential Information of such Other Party which the Counterparty or such Person is legally compelled to disclose, only to such Person or Persons to which the Counterparty or such Person is legally compelled to disclose, and the Counterparty shall provide notice to each such recipient (in co-operation with legal counsel for such Other Party) that such Confidential Information of such Other Party is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if practicable, shall obtain each recipient's written agreement to receive and use such Confidential Information of such Other Party subject to those terms and conditions.

## **6.5 FIPPA Records**

The Parties acknowledge that the Counterparty is subject to FIPPA. The Counterparty has reviewed the Confidential Information of each Other Party contained in the Technical Schedule and has considered such Confidential Information to be disclosed to the Counterparty in connection herewith. The Parties agree that such Confidential Information is highly confidential commercial, financial, scientific, technical, and/or labour relations information, and/or contains trade secrets and is supplied in confidence by each Other Party to the Counterparty on that basis and, for greater certainty, for the purposes of subsection 25.13(3) of the Electricity Act, the Counterparty hereby designates as confidential or highly confidential the Confidential Information of the Other Parties provided to the Counterparty up to and including the date of this Agreement and acknowledges that the Other Parties have advised it that all Confidential Information to be provided to the Counterparty

after the date of this Agreement is considered by the Other Parties to be confidential or highly confidential. The Parties agree that the disclosure of the Confidential Information contained in the Technical Schedule, and the Counterparty acknowledges that the Other Parties have advised it that disclosure of the Confidential Information provided to the Counterparty pursuant to this Agreement, could reasonably be expected to cause irreparable harm and material financial loss to each Other Party and significant prejudice to each Other Parties' competitive position and to interfere with each Other Party's contractual arrangements and the negotiations in which the Parties are engaged. Accordingly, the Counterparty acknowledges that each Other Party is disclosing its Confidential Information to the Counterparty on the basis that all such Confidential Information is exempt from access by and disclosure to others pursuant to section 17(1) of FIPPA and the Counterparty agrees it will treat all Confidential Information contained in the Technical Schedule as being so exempt from the disclosure requirements under FIPPA; provided, however, that the Parties acknowledge and agree that the refusal of the Chief Executive Officer of the Counterparty to disclose any Confidential Information in accordance with section 17(1) of FIPPA may be the subject of an appeal to the Information and Privacy Commissioner as set forth under FIPPA who, upon such appeal, shall have the final decision as to disclosure. In the event that the Counterparty is requested to disclose, and the Counterparty is planning to disclose, to others pursuant to FIPPA all or any part of the Confidential Information disclosed to the Counterparty by any Other Party, the Counterparty will promptly advise such Other Party of such request, so that such Other Party will have the opportunity to make detailed representations to the appropriate authority about the nature of the information. The Counterparty agrees to comply with Section 6.4(b) of this Agreement in respect of any request for disclosure of any Other Party's Confidential Information pursuant to FIPPA. This Section 6.5 is in addition to, and without limitation of, the obligations of the Counterparty set out in Section 6.2.

## **6.6 Disclosure of this Agreement**

Notwithstanding this Article 6, the Parties acknowledge and agree that this Agreement, other than the Technical Schedule, does not contain Confidential Information and may be disclosed by a Party without the consent of the other Parties and without the application of Section 6.4. Notwithstanding any other term of this Agreement, any Other Party, any Affiliate of an Other Party, any Limited Partner or General Partner or any direct or indirect shareholder that controls any Limited Partner, as applicable, may, if required by any Laws and Regulations or the requirements of any stock exchange, disclose the Technical Schedule without the consent of the Counterparty and without the application of the provisions of Section 6.4. Notwithstanding any other terms of this Agreement, the Counterparty and the Government of Ontario may, if required by any Laws and Regulations, but without limiting the application of Section 6.5, disclose the Technical Schedule without the consent of any Other Party and without the application of the provisions of Section 6.4.

## **ARTICLE 7 TERM**

### **7.1 Term**

- (a) This Agreement shall become effective at the beginning of the hour ending 01:00 hours (EST) on the Commencement Date. Subject to earlier termination in accordance with the provisions hereof, "**Term**" means that period of time

commencing upon the Commencement Date and ending at the same time as the termination of the Implementation Agreement.

- (b) No Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.
- (c) Except for Article 6, and with the exception of the obligations to or relating to the determination or the payment of any amounts payable hereunder with respect to Transfers or Refinancings occurring prior to the date of termination, upon the expiration of the Term, the Parties' respective obligations hereunder shall terminate and be of no further force and effect.

## **ARTICLE 8**

### **CONTRACT OPERATION AND ADMINISTRATION**

#### **8.1 Record Retention; Audit Rights**

The Parties shall each keep complete and accurate records and all other data required by any of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Parties, on a confidential basis as provided for in Article 6 of this Agreement, shall provide reasonable access to the relevant and appropriate financial records and data kept by it relating to this Agreement reasonably required to verify information provided in accordance with this Agreement in relation to a Transfer or Refinancing. A Party may use its own employees for purposes of any such review of records, provided that those employees are bound by the confidentiality requirements provided for in Article 6. Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor provided that such third party auditor is bound by the confidentiality requirements provided for in Article 6. The Party seeking access to such records in this manner shall pay the fees and expenses associated with the use of the third party auditor.

Notwithstanding any other provision hereof, this Section 8.1 shall not apply to a Non-Designated Entity except in relation to (a) a Refinancing if such Non-Designated Entity was at one time a Designated Entity which had undertaken a Refinancing and (b) any Transfer if such Non-Designated Entity was an Intermediate Entity in relation to any Transfer (including a Transfer made by another entity through which a TopCo holds its Beneficial Interest in the Generator in the same chain as such Intermediate Entity).

#### **8.2 Notices**

All notices pertaining to this Agreement shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice shall be addressed to the other Parties as follows:

If to the Generator: Bruce Power L.P.  
Building B06  
177 Tie Road  
Municipality of Kincardine  
R.R. #2  
Tiverton, Ontario N0G 2T0

Attention: Vice President, Power Marketing  
Facsimile: (519) 361-1845

and a mandatory copy to: Bruce Power L.P.  
Building B06  
177 Tie Road  
Municipality of Kincardine  
R.R. #2  
Tiverton, Ontario N0G 2T0

Attention: General Counsel & Corporate Secretary  
Facsimile: (519) 361-4333

If to Ontario Municipal Employees Retirement Board: Ontario Municipal Employees Retirement Board  
One University Avenue  
Suite 1100  
Toronto, Ontario M5J 2P1

Attention: Senior Vice President, Investments  
Facsimile: (416) 369-9134

If to TransCanada Corporation: TransCanada Corporation  
450 – 1<sup>st</sup> Street S.W.  
Calgary, Alberta T2P 5H1

Attention: Executive Vice President and General Counsel  
Facsimile: (403) 920-2410

If to the Counterparty: Ontario Power Authority  
175 Bloor Street East  
North Tower, Suite 606  
Toronto, Ontario M4W 3R8  
  
Attention: Chief Executive Officer  
Facsimile : (416) 967-1947

and a mandatory copy to: Ontario Power Authority  
175 Bloor Street East  
North Tower, Suite 606  
Toronto, Ontario M4W 3R8  
  
Attention: General Counsel  
Facsimile: (416) 967-1947

and to: Ministry of Energy  
4th Floor, Hearst Block  
900 Bay Street  
Toronto, Ontario M7A 2E1  
  
Attention: Deputy Minister  
Facsimile: (416) 327-6755  
(which shall not be required to constitute notice)

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 2:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 2:00 p.m. local time or if such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Any Party may, by written notice to the others, change its respective address to which or persons to whom notices are to be sent.

## **ARTICLE 9 MISCELLANEOUS**

### **9.1 Informal Dispute Resolution**

If any dispute arises under or in connection with this Agreement that the relevant Parties cannot resolve, each of the relevant Parties to the dispute shall promptly advise its senior management, in writing, of such dispute and notify each other Party that their respective senior management has been so advised. Within five (5) Business Days following delivery of any such notice, a senior executive (Senior Vice-President or higher) from each relevant Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, any relevant Party may require the dispute to be settled pursuant to Section 9.2.

## **9.2 Formal Dispute Resolution**

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to Section 9.2; provided, however, that unless expressly provided otherwise in this Agreement, the relevant Parties to the dispute have first completed a Senior Conference pursuant to Section 9.1 before commencing arbitration proceedings pursuant to Section 9.2.

- (a) Any disputes arising in respect of this Agreement shall be determined in accordance with Exhibit 9.2, which sets out the sole and exclusive procedure for the resolution of disputes arising in respect of this Agreement. The resolution of disputes pursuant to the terms of Exhibit 9.2 shall be final and binding upon the relevant Parties to the dispute and there shall be no appeal therefrom, including any appeal to a court on a question of law, a question of fact or a question of mixed fact and law.
- (b) Each of the Parties acknowledges that a breach or threatened breach by any of them of any provision of this Agreement may result in another Party suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, each of the Parties is entitled to equitable relief, including interim, interlocutory and permanent injunctive relief, specific performance and other equitable remedies, in the event of any breach or threatened breach of the provisions of this Agreement, in addition to any other remedies available to the Parties and nothing in this Section 9.2 shall delay or prevent any Party from seeking such relief.

## **9.3 Business Relationship**

Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

## **9.4 Binding Agreement**

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

## **9.5 Assignment**

- (a) Except as set out in this Section 9.5, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by any Party, including by operation of Laws and Regulations, without the prior written consent of the other Parties, which consent may be unreasonably withheld, delayed or conditioned.
- (b) Notwithstanding any other provision hereof, the Counterparty may, without the consent of the other Parties hereto, assign this Agreement to any Person to whom the

Implementation Agreement is validly assigned by Counterparty in accordance with the terms thereof, on notice to the other Parties hereto; provided however that such assignee has the ability pursuant to Laws and Regulations to recover all amounts paid or payable to the Generator pursuant to the Implementation Agreement directly or indirectly from Electricity consumers in the Province of Ontario or such assignee has the full faith and credit of the Government of Ontario. No assignment by a Party or any of its successors or permitted assigns hereunder shall be valid or effective unless and until the assignee agrees with each other Party in writing to assume all of the assigning Party's obligations and be bound by the terms of this Agreement. If a valid assignment of this Agreement is made by a Party in accordance with this Section 9.5, each other Party acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assigning Party to each other Party, the assigning Party shall be relieved of and released from all its duties, obligations and liabilities hereunder.

#### **9.6 Opinion of Parties Counsel**

Concurrently with the execution and delivery hereof, each Party shall deliver to the other Parties (i) a legal opinion from a law firm acceptable to the other Parties, acting reasonably, and in form and substance acceptable to the other Parties, acting reasonably, that this Agreement is enforceable against the first Party in accordance with its terms; and (ii) an officer's certificate addressed to such law firm and the other Parties setting out the factual matters upon which such law firm is relying in order to deliver such opinion.

#### **9.7 Counterparts**

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile, but such Party shall promptly deliver to each other Party an originally executed copy of this Agreement.

#### **9.8 Rights and Remedies Not Limited to Contract**

Unless expressly provided in this Agreement, the express rights and remedies of any Party set out in this Agreement are in addition to and shall not limit any other rights and remedies available to any Party, at law or in equity.

#### **9.9 Further Assurances**

Each of the Parties shall, from time to time on written request of any other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

### 9.10 Several Liability Only

The liability of each TopCo and the Generator is a several liability, and not a joint and several liability hereunder, and nothing herein shall create or be construed to create any joint and several liability or impose any other obligation or liability whatsoever in respect of the performance or non-performance of the terms hereof (i) by a TopCo or its Affiliates, Intermediate Entities or Partners in respect of another TopCo or any of its Affiliates, Intermediate Entities, Partners or the Generator or (ii) by the Generator in respect of a TopCo or any of its Affiliates or Intermediate Entities, as applicable.

### 9.11 Substitute Performance

A TopCo may perform some or all of its obligations hereunder by providing for substitute performance thereof by another Person (including a Borrower or a Transferor, a “**Performing Person**” for the purposes of this Section 9.11), provided that a TopCo’s obligations hereunder shall be absolute and unconditional and shall not be released, discharged, diminished, limited or in any way affected by any matter, act, failure to act, or circumstance whatsoever prior to the satisfaction of such obligations in full, including:

- (a) any lack of power, incapacity or disability of a Performing Person;
- (b) any lack of validity, illegality, unenforceability, impossibility, impracticability, frustration of purpose, force majeure or act of government or governmental authority of or relating to such obligations or the Performing Person;
- (c) any irregularity, defect or informality, or any fraud, on the part of the Performing Person;
- (d) the financial condition, insolvency or bankruptcy or, where applicable, reorganization or winding-up of the Performing Person;
- (e) any defence, right of set-off, counterclaim, combination of accounts, cross-claim or other right or privilege available to, or a discharge of, the Performing Person with respect to such obligations; or
- (f) any loss or impairment of any right of any Person to claim subrogation, reimbursement, contribution or indemnity from another Person;

which circumstances shall not reduce, relieve or excuse TopCo’s obligations hereunder or permit any delay in the performance thereof.

For greater certainty, this provision shall not constitute the Counterparty’s consent to an assignment to or an assumption by a Performing Person of a TopCo’s obligations hereunder, but rather is only intended to permit a TopCo to satisfy its obligations hereunder through the actual performance of such obligations by to or by another Person. No actions, omissions, conduct or dealings by the Counterparty in relation to, in respect of or with a Performing Person shall constitute the substitution or replacement of a TopCo’s obligations hereunder or the waiver thereof. The acceptance by the Counterparty of any performance by a Performing Person in respect of an obligation hereunder shall

not preclude, diminish, limit or in any way affect the exercise of rights against the TopCo by the Counterparty hereunder.

### **9.12 Re Unions**

For greater certainty, the foregoing provisions of this Agreement relating to Transfers and Refinancings do not apply to the Unions. It is intended by the Counterparty that the foregoing provisions apply to a Union if its respective PPI in the Generator increases above 10.96% in respect of the Power Worker's Union Trust No. 1 or 4.04% in respect of The Society of Energy Professionals Trust. The TopCos and the Generator agree that in either such event, they shall use commercially reasonable efforts to have such Union become subject to the provisions of this Agreement, *mutatis mutandis*.

### **9.13 Time of Essence**

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

### **9.14 Conditions Subsequent**

For the purposes of this Section 9.14, the "**Tax Ruling Conditions**" mean that:

- (a) the Generator and BPLP shall have received the Tax Ruling from the Canada Revenue Agency;
- (b) all of the conditions to and terms of the Tax Ruling, including the reorganization involving the Generator and BPLP and their respective partners, shall have been satisfied and the Tax Ruling shall be in full force and effect;
- (c) all of the transactions contemplated by the Tax Ruling shall have occurred.

The Generator shall provide notice to the Counterparty as soon as practicable following occurrence of the Tax Ruling Conditions and the date of such notice shall be the commencement date for the purposes of this Agreement (the "**Commencement Date**"); provided, however, that if on or before 5:00 p.m. (Toronto time), November 8, 2005, the Tax Ruling Conditions have not been met, this Agreement shall immediately terminate and be of no further force and effect and none of the Parties shall have any rights, obligations or liabilities under or pursuant to this Agreement to any other Party and it shall for all purposes be, and be deemed to be, null and void *ab initio*.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

**BRUCE POWER A L.P., by its general partner, BRUCE POWER A INC.**

**ONTARIO POWER AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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**TRANSCANADA CORPORATION**

**ONTARIO MUNICIPAL EMPLOYEES RETIREMENT BOARD**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: