

**ONEIDA ENERGY STORAGE LP**

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**LIMITED PARTNERSHIP AGREEMENT**

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**November 7, 2019**

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## LIMITED PARTNERSHIP AGREEMENT

THIS AGREEMENT is made the 7th day of November, 2019

AMONG:

ONEIDA ENERGY STORAGE GP INC., a corporation incorporated under the laws of Ontario,

(hereinafter referred to as "**Oneida GP**"),

-and -

11456784 CANADA LIMITED, a corporation incorporated under the laws of Canada (hereinafter referred to as "**Six Nations**"),

-and-

NRSTOR INCORPORATED, a corporation incorporated under the laws of Ontario (hereinafter referred to as "**NRStor**"),

Six Nations and NRStor are each a party and together, the parties

- and -

each party who, from time to time, becomes a limited partner in accordance with the terms of this Agreement.

### RECITALS:

1. Oneida Energy Storage LP (the "**Partnership**") is formed as a limited partnership under the laws of the Province of Ontario on \_\_\_\_\_, 2019 by the filing of a Declaration pursuant to the *Limited Partnerships Act* (Ontario) (the "**Act**") and the entering into of this limited partnership agreement.
2. Schedule "A" hereto sets forth (i) the Capital Contributions of each of the Limited Partners and (ii) the number of Units of each of the Limited Partners.
3. The Partnership has been established for the purpose of carrying on the business of developing, constructing and operating a battery energy storage project.

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

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

For the purposes of this Agreement (including the recitals and the Schedules hereto), the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Act**" has the meaning set out in the recitals to this Agreement;

"**Affiliate**" means, with respect to any specified Person, (a) any other Person who directly or indirectly, controls, is controlled by or is under common control with such Person;

"**Agreement**" means this limited partnership agreement, including the Schedules hereto, in each case as amended, supplemented, modified or varied from time to time;

"**Auditor**" has the meaning set forth in Section 2.8;

"**Business Day**" means any day other than a Saturday, a Sunday or any statutory holiday in the Province of Ontario;

"**Capital Contribution**" means the amount of money and the value of property (as determined by the General Partner acting reasonably and in good faith) contributed to the Partnership by a Partner;

"**Certificate**" has the meaning set out in Section 5.5;

"**Chair**" has the meaning set out in Section 16.3;

"**Common Shares**" means the common shares of the General Partner;

"**Declaration**" means the declaration filed under the Act establishing the Partnership as a limited partnership, as the same may be amended, restated, supplemented or replaced from time to time;

"**Filings**" means any declaration, instrument or document required to be filed (a) under the Act or any similar laws, rules or regulations of any other jurisdiction in which the Partnership or the General Partner carries on business from time to time, (b) for purposes of this Agreement or (c) to give effect to or maintain the formation, status or continuance of the Partnership as a limited partnership under any such laws, rules or regulations;

"**Fiscal Year**" has the meaning set out in Section 2.4;

"**GAAP**" has the meaning set out in Section 1.8;

"**General Partner**" means the Person who from time to time is the general partner of the Partnership;

**"Governmental Agency"** means any: (i) multinational, federal, provincial, territorial, state, municipal, local or other government, governmental or public department, court, arbitrator, arbitral body, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) subdivision or authority of any of the foregoing; or (iii) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above;

**"Indemnifying Partner"** has the meaning set out in Section 15.4;

**"Indemnitee"** has the meaning set out in Section 11.5(a);

**"Interest"** means, in respect of a Partner at any time, all the rights, obligations and interest of such Partner in the Partnership at such time, as set out in this Agreement;

**"Limited Partner"** means any registered owner of Units whose name appears on the Register of the Partnership's limited partners as maintained by the General Partner, and includes the General Partner if and to the extent that the General Partner holds Units;

**"Losses"**, in respect of any matter, means all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses arising as a consequence of such matter, including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement;

**"Offer Notice"** has the meaning set out in Section 5.3;

**"Ordinary Resolution"** means a resolution passed by the affirmative vote, whether in person or by proxy, by Limited Partners holding in the aggregate at least 51% of the outstanding Units, cast at a duly constituted meeting of Limited Partners, or an adjournment or postponement thereof, called for the purpose of considering such resolution at which a quorum was present or, alternatively, a written resolution signed in one or more counterparts by Limited Partners holding in the aggregate at least 51% of the outstanding Units;

**"Partner"** means any Limited Partner or the General Partner;

**"Partnership"** has the meaning set out in the recitals to this Agreement;

**"Person"** means any individual (natural person), partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, limited liability company, trust, trustee, executor, administrator or other legal personal representative, Governmental Agency or entity however designated or constituted;

**"Project"** means the large scale battery park located in Caledonia, Ontario on the lands of Six Nations of the Grand River or such other lands as may be agreed by the parties;

**"Register"** has the meaning set out in Section 10.1;



"**Right of First Refusal**" means the right, but not the obligation, of each Limited Partner pursuant to Section 13.1 to purchase all or any portion of the Transfer Units that a Limited Partner proposes to transfer.

"**Shareholder**" has the meaning set out in the Unanimous Shareholder Agreement;

"**Shares**" has the meaning set out in the Unanimous Shareholder Agreement;

"**Special Amendment**" has the meaning as set out in Section 17.1;

"**Tax Act**" means the *Income Tax Act* (Canada);

"**Third Party**" means, with respect to any Person, a Person dealing at arm's length (as such term is used in the Tax Act) with that Person. For the purposes hereof, any Affiliate of a Limited Partner shall be deemed to be not dealing at arm's length with such Limited Partner;

"**Transfer**" means (a) any sale, exchange, transfer, assignment, gift, bequest, mortgage, charge, pledge, encumbrance, grant of security interest, hypothecation, alienation, transmission or other transaction or disposition, or series of related transactions or dispositions, whether voluntary, involuntary or by operation of law, by which the legal title or beneficial ownership, the economic risk or return, a security interest or other interest in, any Units or other securities passes, directly or indirectly, from one Person to another Person, or to the same Person in a different capacity, whether or not for value, other than an involuntary transmission of any Shares to the legal representative of a Person for so long as the Units or other securities continue to be held by the legal representative of such Person, or (b) any agreement, undertaking or commitment to effect any of the foregoing, and "**to Transfer**", "**Transferred**", "**Transferor**" and "**Transferee**" and similar expressions have corresponding meanings;

"**Transfer Units**" means Units owned by a Limited Partner, or issued to a Limited Partner after the date hereof.

"**Unanimous Shareholder Agreement**" means the unanimous shareholder agreement, in the form attached as Schedule "B", as may be amended, restated, amended and restated, replaced or otherwise modified from time to time, governing the General Partner;

"**Units**" means limited partnership units;

## 1.2. **Sections and Headings**

The division of this Agreement into Sections and the insertion of headings and an index are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless otherwise specified, any reference herein to a Section or Schedule refers to the specified Section of or Schedule to this Agreement.

### **1.3. Rules of Construction**

In this Agreement:

- (a) words importing the singular number only shall include the plural and *vice versa* and words importing gender shall include the masculine, feminine and neuter genders;
- (b) the words "include", "includes" and "including" mean "include", "includes" or "including", in each case, "without limitation";
- (c) reference to any agreement or other instrument means such agreement or other instrument as amended, restated, replaced or supplemented from time to time;
- (d) references to any Person includes such Person's successors and assigns (to the extent such assigns are permitted by the terms of any applicable agreement);
- (e) unless the context otherwise requires, any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;
- (f) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and
- (g) whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next following Business Day.

### **1.4. Currency**

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in Canadian dollars.

### **1.5. Applicable Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in such province, and each party hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

### **1.6. Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof and each provision is hereby declared to be separate, severable and distinct.

### **1.7. No Waiver**

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

### **1.8. Accounting Terms**

In this Agreement, accounting terms that are not defined herein shall be construed in accordance with GAAP. "GAAP" refers to generally accepted accounting principles as recommended from time to time by the Canadian Institute of Chartered Accountants or any successor institute. Other than as contemplated in this Agreement, all calculations and determinations of income, gains and losses hereunder shall be made by the General Partner in accordance with GAAP, consistently applied, all of which shall be binding upon the Limited Partners.

### **1.9. Determinations**

Except to the extent specifically and expressly provided for by the terms of this Agreement, all decisions, determinations, judgments, elections and actions (including any exercise of any discretion) that may be made or done by the Partnership, and all consents that may be given by the Partnership, shall be made, done or given, as the case may be, by the General Partner.

## **ARTICLE 2 FORMATION OF THE PARTNERSHIP**

### **2.1. Formation and Existence**

The Partners acknowledge and confirm that the Partnership was formed as a limited partnership under the Act on \_\_\_\_\_, 2019 by the filing of the Declaration.

### **2.2. Name**

The Partnership shall carry on its activities under the name Oneida Energy Storage LP or, provided that the General Partner makes all necessary Filings, such other name or names as the General Partner may from time to time deem appropriate, including in order to comply with the laws of the jurisdictions in which the Partnership may carry on such activities. The Partnership

may also use the French form of any such name. The General Partner shall promptly notify each Limited Partner of any change in the name of the Partnership. The surname or a distinctive part of the corporate name of a Limited Partner shall not appear in the firm name of the Partnership unless it is also the surname or a distinctive part of the corporate name of the General Partner.

### **2.3. Registered Office**

The registered and principal office of the Partnership shall be Suite 345, 101 College Street, Toronto, ON M5G 1L7, or such other address in the Province of Ontario as the General Partner may designate from time to time. The General Partner shall promptly notify each Limited Partner of any change in the registered or principal address of the Partnership.

### **2.4. Fiscal Year**

Unless otherwise determined by the General Partner, the fiscal year ("**Fiscal Year**") of the Partnership shall end on the 31st day of December of each calendar year. Subject to the Tax Act, the Partnership shall adopt such fiscal year for all relevant tax purposes.

### **2.5. Term**

The Partnership shall continue until it is dissolved in accordance with this Agreement and the Act.

### **2.6. Restriction on Jurisdiction**

The Partnership shall carry on business only in those jurisdictions that provide a regime that limits the liability for its Limited Partners. The General Partner shall take all steps, within its control, necessary or advisable under the laws of those jurisdictions in which the Partnership carries on business to register the Partnership as an entity that provides limited liability to its Limited Partners.

### **2.7. Organizational Declarations and Other Filings**

The General Partner shall promptly execute all declarations, certificates and other documents consistent with the terms of this Agreement necessary for the General Partner to accomplish all filing, recording, publishing and other acts as may be appropriate to comply with all requirements for: (a) the formation and operation of a limited partnership under the laws of the Province of Ontario; (b) the operation of the Partnership as a partnership in which the Limited Partners have limited liability, in all jurisdictions where the Partnership proposes to operate or in which Limited Partners have addresses of record in the Partnership records; and (c) all other filings which the General Partner determines, acting reasonably, are required or advisable to be made by the Partnership.

### **2.8. Appointment of Auditor**

The auditor of the Partnership (the "**Auditor**") shall be such Person as approved by the General Partner from time to time.

**ARTICLE 3  
PURPOSE OF THE PARTNERSHIP**

**3.1. Partnership Purpose**

The Partnership has been formed for the purpose of carrying the business of developing, constructing and operating a battery energy storage project and any business incidental thereto.

**3.2. Indebtedness**

The Partnership may incur indebtedness for borrowed money from time to time as approved by the General Partner. Any such indebtedness may be secured by mortgages, pledges, charges, assignments, hypothecs and any other kinds of security interest in any or all of the property, assets or undertakings of the limited partners as approved by the General Partner.

**ARTICLE 4  
CAPITAL OF THE PARTNERSHIP**

**4.1. Capital**

The Capital Contribution of each of the Limited Partners shall be as set forth in Schedule "A" hereto, as may be amended from time to time. In the event that (i) additional Capital Contributions are made, (ii) additional Units are issued in accordance with this Agreement, or (iii) any Limited Partner Transfers Units in accordance with this Agreement, Schedule "B" shall be automatically updated by the General Partner to reflect such adjustments.

**4.2. No Right to Withdraw Amounts**

No Limited Partner shall have the right to withdraw, or call for the withdrawal of, any or all of its Capital Contribution or to receive any distribution from the Partnership, except as expressly provided in this Agreement.

**4.3. No Interest Payable on Accounts**

No interest shall be paid to any Partner on any Capital Contribution to the Partnership or any other amount, except as expressly provided in this Agreement.

**4.4. Financial Requirements**

The Partnership shall, to the greatest extent possible, fund all of its expenses and liabilities from capital receipts and operating income. If the Partners determine that the Partnership requires additional funds, the Partnership shall obtain such funds, to the greatest extent possible, by borrowing from traditional third party lenders or related project syndication of equity (subject to the terms and conditions set forth in Article 5) in accordance with Section 4.5. In the event the Partnership is unable to obtain any such additional funds from such a financial institution or such other equity sources, such amounts will be funded by the Limited Partners in their respective Proportionate Shares pursuant to Section 4.6.

#### 4.5. Bank Financing

The General Partner shall decide from whom the debt of the Partnership will be borrowed and the terms and conditions of such borrowing, and the General Partner shall, if required, obtain such debt upon the security of the assets of the Partnership. The General Partner is authorized to enter into any commitments, agreements, pledges or grants of security as may be required to complete any borrowing or financing by the Partnership, in each case upon the security of the assets of the Partnership, without any further authorization or consent.

#### 4.6. Contributions of Additional Capital

In the event that funding required by the Partnership is not available as set forth above:

- (a) The General Partner: (i) shall, if and when approved by the Limited Partners pursuant to the Shareholders' Agreement, request the Limited Partners to make Capital Contributions on an as needed basis. Any such Capital Contributions will be allocated to the Limited Partnership Units held by such Limited Partner making such Capital Contributions.
- (b) Any such request from the General Partner for Capital Contributions in addition to the Initial Capital shall be made at such time or times and in such additional amounts as determined by the General Partner and as set out in a written notice from the General Partner to the Limited Partners (a "**Cash Call Notice**"), which Cash Call Notice shall provide the date on which such Capital Contributions are to be made and that shall not be more than thirty (30) days after delivery of the Cash Call Notice. Of the total amount requested in a Cash Call Notice, each Limited Partner shall make a Capital Contribution equal to its Proportionate Share of such total amount. Such Capital Contribution shall be added to the Capital Contribution as set forth on Schedule "A" of each Limited Partner without additional Units being issued.
- (c) If a Limited Partner fails to make its Capital Contribution as required under a Cash Call Notice when it is due (the "**Non-Paying Partner**"):
  - (i) the Non-Paying Partner shall be a Defaulting Limited Partner until such Capital Contribution is paid by the Defaulting Limited Partner, or, if all of such Capital Contribution has been advanced by the other Limited Partner as provided below, until the Default Loan is repaid in full (including all interest accrued thereon) to such other Limited Partner; and
  - (ii) at any time within thirty (30) days after the due date for the payment of the Capital Contribution by the Non-Paying Partner, the other Limited Partner, provided that it has paid its Proportionate Share of the amount requested under the Cash Call Notice when due (the "**Paying Partner**"), shall have the right (but not the obligation) to contribute as a Capital Contribution all of the unpaid amount of the Capital Contribution of the Non-Paying Partner (the "**Excess Amount**") and the Excess Amount shall

for all purposes be considered to be a loan from the Paying Partner to the Non-Paying Partner (a "**Default Loan**").

### **Default Loans**

The following shall apply to each Default Loan:

- (a) it shall accrue interest at a rate of ten percent (10%) per annum from the date of payment of the Excess Amount until the same shall be fully paid and satisfied to the Paying Partner;
- (b) the Default Loan and together with all interest thereon shall be payable on demand;
- (c) prior to demand, the Default Loan and interest thereon shall be paid to the Paying Partner from distributions of Cash Available for Distribution otherwise payable to the Non-Paying Partner until such time as all principal and interest on the Default Loan have been paid in full, and each Limited Partner hereby irrevocably directs the General Partner to make such payment. For all purposes of this Agreement, any such payment shall be deemed to have been received as a distribution of Cash Available for Distribution by the Non-Paying Partner. Any such payment to the Paying Partner shall be applied first to reduce any accrued interest owing on the Default Loan, and then, if any part of the payment remains, to reduce principal sum; and
- (d) the Non-Paying Partner may from time to time prepay the entire amount of the Default Loan without notice, bonus or penalty, provided that concurrently it also pays all accrued interest thereon.

## **ARTICLE 5 UNITS OF THE PARTNERSHIP**

### **5.1. Units**

- (a) The Interests of the Limited Partners in the Partnership shall be divided into and represented by units issued in accordance with this Agreement (the "**Units**"), each of the Units representing a share of the aggregate Interests of the Limited Partners in the Partnership as determined pursuant to this Agreement.
- (b) The maximum number of Units that may be issued in the Partnership is unlimited.
- (c) Fractional Units may be issued or transferred.
- (d) The Units shall be deemed to be "securities" as defined under and for the purposes of the *Securities Transfer Act, 2006* (Ontario) and any comparable legislation.

## **5.2. Interest of the General Partner**

The General Partner, in its capacity as the general partner of the Partnership, shall hold a general partner Interest in the Partnership with the terms and conditions expressly provided for in this Agreement. The General Partner shall have the right to receive such distributions in respect of that Interest in the Partnership only as are expressly provided for in this Agreement.

## **5.3. Issuance of Additional Units**

Additional Units may be issued by the Partnership only upon the approval of the General Partner and, if applicable, only in accordance with this Section 5.

- (a) The General Partner shall give notice (the "Offer Notice") to each Limited Partner stating (i) the Partnership's *bona fide* intention to offer such Units, (ii) the number of such Units to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Units.
- (b) By notification to the General Partner within twenty (20) Business Days after the Offer Notice is given, each Limited Partner may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice.

The right of any Limited Partner to purchase such New Units under this Section 5.3 shall be conditioned upon such Limited Partner simultaneously purchasing a corresponding proportion of Common Shares.

## **5.4. Who May Not Subscribe**

No Unit may be subscribed for by or on behalf of or registered in the name of any Person (i) that is not resident in Canada for purposes of the Tax Act or, if such Person is a partnership, is not a Canadian partnership within the meaning of the Tax Act; (ii) that is a "tax shelter" as defined in subsection 237.1(1) of the Tax Act; (iii) an interest in which is a "tax shelter investment" as defined in the Tax Act; or (iv) that is a "financial institution" as defined in subsection 142.2(1) of the Tax Act.

## **5.5. No Unit Certificates**

- (a) Unless otherwise approved by the General Partner, the Units shall be book entry only and shall not be evidenced by certificates. If the General Partner approves the issuance of certificates evidencing the issued and outstanding Units (the "**Certificates**"), then the Certificates shall be in such form as the General Partner may approve from time to time.
- (b) The General Partner shall cause any Certificate evidencing a Unit to be endorsed with the following legend:

"This certificate, and the Units that it evidences, is subject to a Limited Partnership Agreement dated [\_\_\_\_\_], 2019, as may



be amended from time to time, and is transferable only in accordance with that agreement."

- (c) Any Certificate must be signed by at least one authorized signing officer of the General Partner and the validity of a Certificate will not be affected by the circumstance that a Person whose signature is so reproduced is deceased or no longer holds the office which he or she held when the reproduction of his or her signature in that office was authorized. The signature of any authorized signing officer of the General Partner may be mechanically reproduced in facsimile or other electronic form and Certificates bearing such facsimile or electronic signature shall be binding upon the Partnership as if the Certificate had been manually signed by such authorized signing officer.
- (d) If any Certificate is lost or destroyed, the General Partner shall issue a replacement Certificate to the Limited Partner upon receipt of evidence satisfactory to the General Partner of such loss, mutilation, theft or destruction, and upon receiving such indemnification as the General Partner deems appropriate in the circumstances.
- (e) Upon the dissolution of the Partnership and distribution to a Limited Partner of the assets to which such Limited Partner is entitled hereunder, any Certificate for Units issued to such Limited Partner shall become null and void.

#### **5.6. Registration Rights**

The Partnership shall not grant registration rights to any Person without granting equivalent rights to each Limited Partner.

### **ARTICLE 6 DETERMINATION AND ALLOCATION OF INCOME OR LOSS FOR TAX PURPOSES**

#### **6.1. Computation of Income or Loss for Tax Purposes**

The General Partner shall compute the income or loss of the Partnership for tax purposes. The General Partner shall have the right, in computing the income or loss of the Partnership for tax purposes, and in accordance with applicable law, to adopt any method of accounting, to adopt different treatments of particular items and to make and revoke such elections on behalf of the Partnership and the Partners as the General Partner deems to be appropriate in order to reflect the terms of this Agreement; provided that the same method or treatment shall be adopted and the same elections shall be made and revoked in respect of all Limited Partners.

#### **6.2. Allocation of Income or Loss for Tax Purposes**

The income or loss of the Partnership for tax purposes for each Fiscal Year shall be allocated between the General Partner and the Limited Partners and among the Limited Partners by the General Partner in a manner consistent with the distribution provisions set out in Section 7.2. In so allocating net income or loss for tax purposes, the General Partner shall act

reasonably and fairly, taking into account the amount and timing of actual and anticipated distributions to each of the Partners (including the General Partner), with a view to ensuring that, over the term of the Partnership, each Partner is allocated a portion of the Partnership's net income that substantially corresponds to the distributions made to that Partner.

### **6.3. Tax Returns**

Each Partner shall prepare and file such documents as may be required to be prepared and filed under the Tax Act and other similar legislation to which the Partner may be subject and shall include in its computation of income the income or loss of the Partnership for tax purposes as may be determined and allocated to it pursuant to this Article 6.

## **ARTICLE 7 DISTRIBUTIONS**

### **7.1. Distribution Policy**

The General Partner may cause the Partnership to make distributions of cash, property and securities to the Partners at any time and from time to time in the manner described in this Agreement.

### **7.2. Distributions**

Whenever the Partnership is to make a distribution to its Partners, the Partnership shall first distribute to the General Partner 0.001% of the total amount to be distributed by the Partnership. Then, the amount remaining after such distribution to the General Partner shall be distributed to the Limited Partners on a pro rata basis.

## **ARTICLE 8 EXPENSES**

### **8.1. Expenses of Partnership**

The Partnership shall pay all of the costs and expenses of (i) the Partnership, (ii) the General Partner and (iii) the organization and formation of the Partnership and the General Partner.

## **ARTICLE 9 FUNCTIONS AND POWERS OF THE PARTNERS AND MANAGEMENT OF THE PARTNERSHIP**

### **9.1. General Partner**

Until a replacement General Partner is appointed in accordance with this Agreement, the General Partner shall be Oneida GP or any successor (whether by amalgamation, continuance or otherwise) of Oneida GP.

## **9.2. Powers of the General Partner**

Except as otherwise contemplated in this Agreement, the General Partner shall have the full and exclusive right, power and authority to manage the operations and affairs of the Partnership and to make all decisions regarding the activities of the Partnership and the General Partner shall, except as otherwise contemplated by this Agreement, have the exclusive authority to bind the Partnership and to admit Limited Partners. No person dealing with the Partnership shall be required to verify the power of the General Partner to take any measure or any decision in the name of the Partnership. The General Partner shall execute and make, as promptly as possible, any additional Filings that may be necessary or desirable to establish and maintain the Partnership under applicable laws or to accomplish the purposes of this Agreement. The General Partner shall take all actions necessary to maintain the Partnership's status as a limited partnership. Without limiting the foregoing, but always in pursuance of the activities of the Partnership, the General Partner shall be vested with the following powers, except as otherwise contemplated in this Agreement, which shall be exercised in accordance with this Agreement and the Act, but subject to compliance with the Unanimous Shareholder Agreement:

- (a) to manage the Partnership on a day-to-day basis;
- (b) transact business on behalf of the Partnership;
- (c) to make all decisions and to execute and carry out all agreements on behalf of the Partnership involving matters or transactions in furtherance of, in connection with or ancillary to the activities of the Partnership;
- (d) to open and manage in the name of the Partnership bank accounts and to name signing officers for these accounts and to spend or invest the capital of the Partnership in the exercise of any right or power possessed by the General Partner;
- (e) to issue Units;
- (f) to borrow money and to grant mortgages, pledges, charges, assignments, hypothecs and any other kinds of security interests in any or all of the property, assets or undertaking of the Partnership;
- (g) to lend money;
- (h) to retain accounting, legal, investment banking, tax, valuation, appraisal, engineering, marketing and other professional advisors or consultants on behalf of the Partnership as it considers advisable;
- (i) to make or incur and to pay expenses on behalf of the Partnership as it considers appropriate;
- (j) to pay all debts, liabilities and obligations owed by the Partnership;

- (k) to distribute property of the Partnership to the Partners in accordance with Article 7;
- (l) to manage, administer, conserve, develop, operate, exchange and dispose of any and all properties or assets of the Partnership, and in general to engage in any and all phases of activities of the Partnership;
- (m) to prepare, execute and file or cause to be prepared, executed and filed on behalf of the Partnership, whenever required, any amendment to or renewal of the Declaration and any other declarations (including any Filings), certificates, documents or amendments thereto that might be required by the laws of the Province of Ontario or any other jurisdiction in which the Partnership may carry on its activities;
- (n) to prepare, execute, file and publish or cause to be prepared, executed, filed and published all certificates, notices, statements or other instruments (including any Filings) necessary to permit the Partnership to conduct business as, a limited partnership in all jurisdictions in which the Partnership elects to do business or to maintain the limited liability, of the Limited Partners;
- (o) to enter into any other agreement contemplated by this Agreement; and
- (p) to generally to perform all such other acts it considers necessary or desirable in connection with the activities and affairs of the Partnership or to carry out the intent and purpose of this Agreement.

### **9.3. Income Tax Elections and Information Returns**

The General Partner shall have the power to make on behalf of the Partnership and on behalf of each Limited Partner, in respect of any Partner's Interest in the Partnership, and on behalf of any other person who has delegated such power to the General Partner any and all elections, determinations or designations under the Tax Act or any other taxation or other legislation or laws of like import of Canada or of any province or jurisdiction.

### **9.4. Restriction of Power of General Partner to Dissolve Partnership**

Notwithstanding anything in this Agreement to the contrary, the General Partner shall not be entitled to dissolve the Partnership except in accordance with Article 12.

### **9.5. Limitation on Activities of General Partner**

The General Partner covenants in favour of all the Limited Partners that its sole purpose is to act as general partner for the Partnership and it will not have any interest, asset, debts or liabilities other than in connection thereto.

## **9.6. Limitation on Power of Limited Partners**

Except as otherwise expressly provided herein a Limited Partner shall not:

- (a) take an active part in the administration, management, control or operation of the business of the Partnership or exercise any power in connection therewith;
- (b) transact any business on behalf of the Partnership or make any commitment on behalf of or otherwise obligate or bind the Partnership;
- (c) execute any document which binds or purports to bind the General Partner or the Partnership;
- (d) hold itself out as having the power or authority to bind the General Partner or the Partnership;
- (e) have any authority or power to act for, or undertake any obligation or responsibility on behalf of, the General Partner or the Partnership;
- (f) bring any action for partition or sale or otherwise in connection with the Partnership or any interest in any assets of the Partnership, whether real, personal or mixed or whether tangible or intangible, or file or register, or permit to be filed, registered or remain undischarged, any claim in respect of any assets of the Partnership;
- (g) bring any action for the dissolution of the Partnership, except pursuant to the exercise of a right to dissolve the Partnership under the Act which cannot be waived by agreement of the Limited Partners (for greater certainty, insofar as any such rights may be waived, the Limited Partners hereby waive such rights); or
- (h) compel or seek a partition, judicial or otherwise, of any of the assets of the Partnership distributed or to be distributed to the Partners in kind in accordance with this Agreement.

Each Limited Partner shall comply with the Act and shall not take any action which may jeopardize or eliminate the Partnership's status as a limited partnership.

## **9.7. Removal of General Partner**

The General Partner may only be removed with the approval in writing of all of the Limited Partners, provided that such approval appoints and admits a new general partner to the Partnership and such new general partner agrees to be bound by this Agreement in place of the General Partner so removed. All of the acts of the General Partner prior to its removal will continue to bind the Partnership.

## 9.8. Confidentiality

- (a) Each Limited Partner shall keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its interest in the Partnership) any confidential information obtained from the Limited Partners pursuant to the terms of this Agreement (including notice of the Partnership's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 9.8 by such Limited Partner), (b) is or has been independently developed or conceived by such Limited Partner without use of the Limited Partners' confidential information, or (c) is or has been made known or disclosed to such Limited Partner by a third party without a breach of any obligation of confidentiality such third party may have to the Limited Partners; provided, however, that a Limited Partner may disclose confidential information (i) to its lawyers, accountants, consultants and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Partnership; (ii) to any prospective purchaser of any shares in the capital of the General Partner or securities of the Partnership from such Limited Partner, if such prospective purchaser agrees to be bound by the provisions of this Section 9.8; (iii) to any existing or prospective Affiliate, Associate, partner, member, shareholder or wholly-owned subsidiary of such Limited Partner in the ordinary course of business, provided that in each case of clause (i), (ii) or (iii) such Limited Partner informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law (including any rules or regulations of any relevant stock exchange), provided that such Limited Partner promptly notifies the Partnership of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.
- (b) Notwithstanding the foregoing, any Limited Partner may provide confidential information in connection with a Transfer of Units permitted by this Agreement if the transferee or potential transferee first enters into a confidentiality agreement (for the benefit of the Partnership) satisfactory to the General Partner, acting reasonably.

## 9.9. Six Nations' Option

- (a) Six Nations shall have the option, exercisable at any time on written notice to the General Partner and NRStor, to acquire fifty (50) Common Shares from treasury of the General Partner for an aggregate price of Fifty Dollars (\$50) (the "**Option**"). Upon the exercise of the Option and the acquisition of such Common Shares, the parties shall enter into the Unanimous Shareholder Agreement.
- (b) Until such time as the Option is exercised by the Six Nations, the General Partner shall not issue any Common Shares or any other shares in its capital except with the prior written consent of Six Nations.

- (c) Until such time as the Option is exercised by Six Nations, NRStor shall not Transfer any of the Common Shares held by it except with the prior written consent of Six Nations.
- (d) Such Option cannot be assigned or transferred to any Person except with the General Partner's consent, not to be unreasonably withheld.

## **ARTICLE 10 ACCOUNTING AND REPORTING**

### **10.1. Partnership Records**

The General Partner shall keep, during the term of the Partnership and for a period of six years thereafter, at its principal business address proper and complete records, including a copy of the Declaration, all Filings and this Agreement and any amendments hereto, and books of account reflecting the assets, liabilities, income and expenditures of the Partnership and a record including, among other, things, a list of the names and addresses of all the Limited Partners and a record of Limited Partners as required under the Act (the "**Register**"). The General Partner shall, from time to time, make all Filings with any Governmental Agency that are required to be made by the Partnership. Any Limited Partner or its duly authorized representatives may, at the sole expense of such Limited Partner, inspect such books, records and registers during regular business hours at the office of the General Partner and a Limited Partner or its representatives shall be entitled to make copies or extracts therefrom with the consent of the General Partner, which consent shall not be unreasonably withheld. For greater certainty, all such books, records and registers shall be confidential information subject to Section 9.8. A Limited Partner, however, will not have access to any information of the Partnership contained in its books and records (other than the Register) which the General Partner is required by legal or contractual restriction to keep confidential or which, in the opinion of the General Partner, acting reasonably, should be kept confidential in the interests of the Partnership.

### **10.2. Delivery of Financial Statements**

- (a) The General Partner shall deliver to each Limited Partner:
  - (i) as soon as practicable, but in any event within 90 days after the end of each fiscal year of the General Partner and the Partnership, unaudited financial statements of the Partnership, by a nationally recognized accounting firm, for and as at the end of such fiscal year (including a balance sheet of the Partnership as at the end of such fiscal year and statements of income, retained earnings and change in cash flow of the General Partner, the Partnership for such fiscal year), prepared in accordance with GAAP, consistently applied;
  - (ii) as soon as practicable, but in any event within 45 days after the end of each quarter of each fiscal year of the General Partner and the Partnership, unaudited financial statements of the General Partner and the Partnership, for and as at the end of such fiscal quarter, prepared in accordance with

GAAP, consistently applied, and accompanied by a discussion of variances from the annual budget;

- (iii) copies of all documents, reports, financial data and other information as such Limited Partner may reasonably request; provided that (A) such documents, reports, financial data and other information are readily available and the General Partner and the Partnership is not required under any circumstances to generate unique documents, reports, financial data and other information specifically for such Limited Partner, and (B) the General Partner and the Partnership shall not be obligated under this subsection (iii) or any other subsection of Section 10.2 to provide information that in the view of counsel (i) it reasonably and in good faith considers to be a trade secret or similar confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the General Partner or the Partnership is permitted to enter into) or the disclosure of which may adversely affect the General partner's, the Partnership's ability to obtain registered intellectual property rights thereto, or (ii) the disclosure of which would adversely affect the solicitor-client privilege between the General Partner or the Partnership and its counsel.

If, for any period, the General Partner or the Partnership has any subsidiary whose accounts are consolidated with those of the General Partner or the Partnership (as applicable), then, in respect of such period, the financial statements delivered pursuant to this Section 10.2 shall be so consolidated.

### **10.3. Taxation**

The General Partner shall send, in a timely manner and in any event within 90 days of the Fiscal Year end, to each Person who was a Limited Partner at any time during a Fiscal Year, such information and documents as are necessary or desirable for such Person to make appropriate tax filings with respect to that Fiscal Year. The General Partner shall file or cause to be filed, on behalf of itself and the Limited Partners, annual Partnership information returns and any other information required to be filed under the Tax Act and any other applicable tax legislation in respect of Partnership matters.

## **ARTICLE 11 LIABILITIES AND INDEMNIFICATION OF THE PARTNERS**

### **11.1. Exercise of Power and Discharge of Duties**

The General Partner shall exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interests of the Partnership, and shall exercise the care, diligence and skill that a reasonable Person would exercise in comparable circumstances and as would the director of a company in comparable circumstances.



Without limiting the generality of the foregoing, the General Partner shall:

- (a) devote to the conduct of the affairs of the Partnership such time as may be required for the proper management of the affairs of the Partnership; and
- (b) hire and maintain or cause the Partnership to hire and maintain a sufficient number of employees and officers to enable the Partnership to conduct its business.

#### **11.2. Liability of the Limited Partners**

Except as expressly provided otherwise by the Act, (i) no Limited Partner shall be liable for the debts, liabilities, losses, contracts and obligations of the Partnership; and (ii) no Limited Partner shall have any personal liability whatsoever in its capacity as a Limited Partner, whether to the Partnership, to any of the Partners, or to the creditors of the Partnership for the debts, liabilities, contracts or other obligations of the Partnership or any losses of the Partnership. Where reasonably possible, the General Partner shall endeavour to include a provision in any agreement, contract, loan document, indenture, guarantee and other binding agreement entered into by the Partnership which stipulates that any recourse a contracting party may have against the Partnership shall be limited as to the amount any party to such agreement, contract, loan document, indenture, guarantee and other binding agreement could recover in a successful action against the Partnership to the Partnership's assets and in no event shall recourse be sought against the Limited Partners.

#### **11.3. Liability of the General Partner**

The liability of the General Partner for the debts, liabilities, losses and obligations of the Partnership shall be unlimited.

#### **11.4. No Liability to Partnership or Limited Partners**

None of the General Partner or any of its Affiliates, nor any of its or its Affiliates' respective current or former shareholders, directors, officers, partners, agents, consultants or employees shall be liable to any Limited Partner or the Partnership for any action taken or failure to act as General Partner, or on behalf of the General Partner, with respect to the Partnership which does not constitute or result from fraud, willful misconduct, gross negligence or bad faith.

The General Partner shall hold the benefit of this Section 11.4 for the benefit of itself, its Affiliates and all of its and its Affiliates' respective current or former shareholders, directors, officers, partners, agents, consultants and employees.

#### **11.5. Indemnification**

- (a) The General Partner, its Affiliates and each of its and its Affiliates' respective current or former shareholders, directors, officers, partners, agents, consultants and employees (in each case, an "**Indemnitee**") shall be indemnified, held harmless and reimbursed only out of the assets of the Partnership in respect of any and all Losses sustained or incurred in connection with or arising as a result of

any action, suit, claim, demand or proceeding, whether civil, criminal, investigative or otherwise, that is threatened or commenced against an Indemnitee in connection with the Limited Partners' business or investments. Notwithstanding the foregoing, no Indemnitee shall be entitled to indemnification by the Partnership hereunder to the extent that any of such Loss arises (i) as a result of the Indemnitee's own fraud, willful misconduct, gross negligence or bad faith, (ii) in respect of any economic losses incurred by any Indemnitee as a result of the ownership of and an Interest in the Partnership, (iii) in respect of any expenses, obligations, liabilities or losses that the Indemnitee has agreed to bear, or (iv) as a result of a breach of this Agreement by the Indemnitee. The Partnership shall pay the reasonable expenses incurred by any such Indemnitee indemnifiable hereunder, as such expenses are incurred, in connection with any proceeding in advance of the final disposition.

- (b) Promptly after becoming aware of any matter that may give rise to a claim for indemnification hereunder, the General Partner shall provide to each Limited Partner written notice of such matter specifying (to the extent that information is available) the factual basis for any claim and the amount of such claim (or if an amount is not then determinable, an estimate of the amount of the claim, if an estimate is feasible in the circumstances). The General Partner shall keep the Limited Partners informed of the status of any claims on a regular basis.
- (c) Notwithstanding any other terms hereof, the satisfaction of any indemnification pursuant to this Section 11.5 shall be from and limited to Partnership assets, and no Partner shall have any personal liability whatsoever on account thereof. The General Partner shall be entitled to apply any assets of the Partnership in its possession to pay any obligation or liability of the Partnership pursuant to this Section 11.5.
- (d) The General Partner shall hold the benefit of this Section 11.5 for its own benefit and for the benefit of the other Indemnitees.

## **ARTICLE 12 DISSOLUTION**

### **12.1. Dissolution**

Subject to the provisions of the Act, the Partnership shall terminate and be dissolved on the date the Partnership has no assets. The process to begin the termination and dissolution of the Partnership may only commence with the written approval of the General Partner and the consent of the Limited Partners. The Partnership will not otherwise be dissolved or terminated by the resignation, removal, death, incompetence, bankruptcy, insolvency, dissolution, liquidation, winding-up or receivership of, or the admission or withdrawal of, the General Partner or any Limited Partner or upon the Transfer of any Units.

## **12.2. Procedure Prior to Dissolution**

Prior to the dissolution of the Partnership, the Partnership shall be liquidated in an orderly manner and in accordance with the provisions of the Act. The General Partner shall act as liquidator to wind up the affairs of the Partnership pursuant to this Agreement, or if the General Partner is otherwise absent or is unable to act as the liquidator, a liquidator shall be appointed to wind up the affairs of the Partnership. As part of winding-up the affairs of the Partnership, the General Partner shall sell or otherwise dispose of all of the Partnership's assets to a Third Party, as determined by the General Partner, and thereafter:

- (a) pay or provide for the payment of the debts and liabilities of the Partnership and liquidation expenses and in its sole discretion establish any reserves for any debts, liabilities and expenses of the Partnership;
- (b) distribute the remaining net proceeds of any such sale or other disposition, together with each remaining asset of the Partnership, to the Partners in accordance with Section 7.2 notwithstanding anything to the contrary in the Act; and
- (c) satisfy all applicable formalities in such circumstances as may be prescribed by the Act and any other applicable law.

The General Partner shall give written notice of the proposed date of dissolution of the Partnership not less than 30 days prior to such date and shall prepare, execute and file and shall cause the Limited Partners to execute such Filings as are required by the Act in order to effect such dissolution. Upon dissolution of the Partnership, the General Partner shall make a final allocation of all items of income, gain, loss and expense in accordance with Section 6.2.

## **12.3. No Returns of Capital**

No Limited Partner is entitled to any return or reimbursement of its Capital Contribution except as specifically provided herein.

## **12.4. No Request for Dissolution by Limited Partners**

Except as provided for in this Agreement, no Limited Partner shall have the right to ask for, or take such steps which could lead to, the dissolution of the Partnership, for the winding-up of its affairs or for the distribution of its assets. To the extent that a Limited Partner has any such right under the Act, it hereby waives such right to the full extent that such right can be waived in accordance with the Act and applicable law.

## **12.5. Termination of Agreement on Dissolution**

This Agreement shall only terminate at the time the provisions of Sections 12.1 and 12.2 shall have been complied with.

## **12.6. Dissolution of General Partner**

Notwithstanding anything in this Agreement to the contrary, the General Partner shall not take, or agree to take, any action (corporate or otherwise) to dissolve, liquidate, file a proposal for bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), wind up or make any arrangement or assignment for the benefit of creditors or appoint any trustee, receiver, receiver-manager or sequestrator to administer its affairs, unless it has first given 60 days' prior notice in writing to each Limited Partner.

## **ARTICLE 13 TRANSFER OF UNITS**

### **13.1. General Prohibition**

- (a) No Limited Partner may Transfer any Units except as expressly permitted by this Agreement.
- (b) Any purported Transfer of Units in violation of this Agreement is void to the maximum extent permitted by applicable law.
- (c) The General Partner will not register or permit the registration of any Transfer of any Units made otherwise than in compliance with the provisions of this Agreement, nor will any voting or other rights attaching to or relating to such Units be exercised, nor will any purported exercise of such rights be valid or effective, nor will any dividend or distribution be paid or made on such Units.

### **13.2. General Restrictions**

- (a) Notwithstanding any other provision in this Agreement to the contrary, no Limited Partner may Transfer any Units if:
  - (i) as a result, the remaining Limited Partners or the Partnership would become subject to any materially restrictive or onerous governmental controls or regulations to which they were not subject prior to the proposed Transfer by reason of the nationality or residence of the proposed Transferee;
  - (ii) as a result, the remaining Limited Partners or the Partnership would become subject to any material taxation or material additional taxation to which they were not subject prior to the proposed Transfer;
  - (iii) the Transfer is not permitted by applicable law or any term of any material agreement or instrument affecting the Partnership unless such Transfer is permitted thereunder if a consent or approval is first obtained and such consent or approval is so obtained;

- (iv) such Transfer is not exempt from any applicable requirement to file a prospectus, registration statement or similar document with applicable securities regulatory authorities to qualify the trade of such Units;
- (v) the Transferee has not agreed in writing with the other Partners to assume and be bound by all the obligations of the Transferor pursuant to this Agreement with respect to the Units transferred arising from and after the date of such Transfer and to be subject to all the restrictions to which the Transferor is subject under the terms of this Agreement; or
- (vi) any consents to such Transfer required pursuant to any agreement or instrument affecting the Partnership or by any governmental agencies have not been obtained in writing and delivered to the other Partners.

### **13.3. Permitted Transfers to Affiliates and Permitted Partner Transferees**

- (a) Notwithstanding Section 13.1 but subject to Sections 13.2 and 13.7, a Limited Partner who is not then in default of its obligations under this Agreement will be entitled to Transfer to an Affiliate, without first complying with Section 13.4 or obtaining the consent of the other Limited Partner, title to any or all of its Units to one of its Affiliates, provided that:
  - (i) the Transferor first establishes to the satisfaction of the General Partner, acting reasonably, (and if the General Partner does not agree that the Transferee is an Affiliate then the matter shall be submitted to binding arbitration) that the Person to which it is transferring its Units is its Affiliate (the "**Affiliated Transferee**");
  - (ii) a copy of the document or instrument effecting the Transfer is delivered to the General Partner; and
  - (iii) the other Partners receive prior written notice of such Transfer.

### **13.4. Right of First Offer re: Transfer of Units by LPs**

- (a) Should a Limited Partner (a "**Section 13.4 Offeror**") determine that it wishes to dispose of all or a portion of its Units (the "**Offered Section 13.4 Units**") to a Person other than an Affiliate, then such Limited Partner shall notify the other Limited Partner (the Person receiving such notice, the "**Section 13.4 Offeree**") of its intention to sell all or a portion of the Offered Section 13.4 Units (a "**Section 13.4 Offer Notice**"). The Section 13.4 Offer Notice will specify the number of Units that are subject to the Section 13.4 Offer Notice, the cash price per Unit and the other terms and conditions pursuant to which the Section 13.4 Offeror is willing to sell the Offered Section 13.4 Units.

- (b) The Section 13.4 Offeree will have the right, exercisable by notice (the "**Section 13.4 Offer Acceptance**") given to the Section 13.4 Offeror within 60 days after receipt of the Section 13.4 Offer Notice (the "**Section 13.4 Offer Deadline**"), to purchase all of the Offered Section 13.4 Units within 10 Business Days (or such longer period as may be required to obtain any required approvals from governmental authorities) of receipt by the Section 13.4 Offeror of the Section 13.4 Offer Acceptance and at the price and on the terms set out in the Section 13.4 Offer Notice.
- (c) If the Section 13.4 Offeree does not deliver a Section 13.4 Offer Acceptance within 60 days after receipt of the Section 13.4 Offer Notice, the Section 13.4 Offeror will have the right to sell all (but not less than all) of the Offered Section 13.4 Units to a Third Party at a price not less than, and on terms no more favourable than, the terms set forth in the Section 13.4 Offer Notice for a period of 180 days after the Section 13.4 Offer Deadline. If the Section 13.4 Offeror has not sold its Units to a Third Party within such 180 day period, then prior to any subsequent transfer or sale as to which Section 13.4 would otherwise apply, the Section 13.4 Offeror shall be required to again make a Section 13.4 Offer to the Section 13.4 Offeree and the provisions of this Section 13.4 shall apply, *mutatis mutandis*.

### **13.5. Tag Along Right**

- (a) In the case of a sale by a Limited Partner of 100% of their Units then held by them to a Third Party (including pursuant to Section 13.4(c)), within two Business Days of entering into a purchase and sale agreement or letter of intent or similar agreement with a Third Party for the sale of all but not less than all of their then-held Units, such Limited Partner will give written notice to the other Limited Partner (the "**Tagged Limited Partner**") (the "**Section 13.5 Third Party Sale Notice**") of the identity of the Third Party, the price per Unit being offered and the other terms on which the Third Party has offered to purchase such Units. The Section 13.5 Third Party Sale Notice shall indicate that the Tagged Limited Partner has the right, exercisable by giving written notice (the "**Tag-Along Notice**") to the other Limited Partner within 10 Business Days after receiving the Section 13.5 Third Party Sale Notice, to require that such Third Party purchase from such Tagged Limited Partner all of its Units.
- (b) If the Tagged Limited Partner elects to exercise its tag-along right pursuant to this Section 13.5, it shall sell all of its Units for the same consideration per Unit and otherwise on the same terms and conditions, *mutatis mutandis*, as Units are sold by the other Limited Partner pursuant to the offer made by the Third Party to the Third Party. For greater certainty, if the proposed sale to the Third Party is terminated by the other Limited Partner or otherwise, the Tagged Limited Partner's right to sell its Units to the Third Party pursuant to the Tag-Along Notice will also terminate.

### **13.6. Conditions to Admission**

As conditions to the admission of a Transferee of a Limited Partner as a substituted limited partner, any such Person will:

- (a) execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner will deem necessary or desirable to effectuate such admission and to confirm the agreement of the Person being admitted as a substitute limited partner to be bound by all of the terms and provisions of this Agreement and to continue the Partnership without its dissolution or termination or its becoming a general partnership under the laws of the Province of Ontario, or for any other reason;
- (b) represent and warrant to the Partnership and the other Partners that:
  - (i) it is not a non-resident of Canada for purposes of the Income Tax Act, or that it is, if a partnership, a "Canadian partnership" for purposes of the Income Tax Act; and
- (c) pay all reasonable expenses in connection with such admission, including the cost of preparing and filing of all necessary amending Partnership Declarations in any jurisdiction.

### **13.7. Continuing Obligations**

Any Limited Partner who Transfers all of its Units in accordance with the terms of this Agreement will be released and discharged from the further performance of its covenants and obligations under this Agreement from and after the date of the Transfer and compliance by the Transferee with this Article 13, except for any other obligations of this Agreement which by their terms are to survive any such Transfer.

### **13.8. Pledge of Units**

No General Partner or Limited Partner will be permitted to Transfer any of its Units by way of a mortgage, pledge, charge, encumbrance, hypothecation or security interest to any other Person or otherwise grant a lien on any of its Units without the prior written consent of the General Partner, (in the case of a transfer by a Limited Partner) or the Limited Partners (in the case of a transfer by the General Partner) which consent may not be unreasonably or arbitrarily withheld.

## **ARTICLE 14 CONFLICTS OF INTEREST/NON-COMPETITION**

### **14.1. No Commingling of Funds**

Funds of the Partnership will not be commingled with the funds of the General Partner or of any other Person.

**ARTICLE 15**  
**TAX MATTERS AND REQUIRED WITHDRAWAL**

**15.1. Representations, Warranties and Covenants**

Each Partner severally and as to itself only represents, warrants and covenants to the General Partner, the Partnership and all the other Limited Partners that:

- (a) it is not a "non-resident" of Canada for the purposes of the Tax Act and, if a partnership, is a "Canadian partnership" for purposes of the Tax Act;
- (b) it shall take all such actions as are necessary to ensure that neither the purchase nor the holding of the Units by it will at any time cause any Units to be a "tax shelter investment" for purposes of section 143.2 of the Tax Act or result in the application of any analogous provisions of any provincial taxing legislation;
- (c) it is not a "financial institution" as defined in subsection 142.2(1) of the Tax Act;
- (d) if it is a Limited Partner, it owns beneficially the number of Units that are expressed to be owned by it as set out in Schedule "A" to this Agreement;
- (e) if a body corporate, it is duly incorporated, amalgamated or continued and validly existing under the laws of its jurisdiction of incorporation and it has the corporate power and capacity to own the Units expressed to be owned by it as set out in Schedule "A" to this Agreement and to enter into and perform its obligations under this Agreement;
- (f) this Agreement has been duly authorized by it, and duly executed and delivered by or on behalf of it and constitutes a valid and binding obligation enforceable against it in accordance with its terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies; and
- (g) the execution, delivery and performance of this Agreement does not and will not contravene the provisions of its articles, by laws, constating documents or other organizational documents or the documents by which it was created or established or the provisions of any indenture, agreement or other instrument to which it is a party or by which it may be bound or any law, statute or regulation applicable to it.

**15.2. Tax Status**

Each Partner covenants and agrees to promptly provide evidence to the General Partner upon request of its status under the Tax Act or any similar statute affecting the status of the Partnership or any other matter which affects or may from time to time affect such status.



### **15.3. Survival of Representations and Warranties**

The representations and warranties contained in this Article 15 shall remain valid after the execution of this Agreement and each Partner shall be required to ensure that each representation and warranty made by it pursuant to the above provisions remains true so long as such party remains a Partner.

### **15.4. Indemnification by Partners**

Notwithstanding any other provision of this Agreement, each Partner (in each case, an "Indemnifying Partner") agrees that it shall be liable for, and shall indemnify, hold harmless and reimburse the Partnership and each other Partner from all Losses sustained or incurred in connection with or arising as a result of the incorrectness of any representation or the breach of any warranty of such Indemnifying Partner contained in Section 15.1 or the breach by such Indemnifying Partner of any covenant set out in Section 15.3.

## **ARTICLE 16 PARTNERSHIP MEETINGS**

### **16.1. Calling of Meetings**

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

### **16.2. Notice of Meeting**

Notice of any Partners' meeting shall be given to each Limited Partner and to the General Partner. The notice shall be given in the manner contemplated by Section 19.4 such that it is received or deemed to have been received not less than ten (10) Business Days and not more than thirty (30) Business Days prior to the meeting and shall specify the time and place of the meeting and, in reasonable detail, the nature of all business to be transacted. Notice for adjourned or postponed meetings shall be mailed not less than five (5) Business Days in advance of the date of the adjourned or postponed meeting and otherwise in accordance with the provisions of notice contained in this Article 16, except that it need not specify the nature of the business to be transacted.

### **16.3. Chair**

The chairman (the "Chair") of all meetings will be chosen by the General Partner unless those Limited Partners present in person or represented by proxy at the meeting choose, by Ordinary Resolution, some other Person present to be Chair.

#### **16.4. Quorum**

Subject to the final sentence of this Section 16.4, all of the Limited Partners present in person or represented by proxy shall constitute a quorum at any meeting of the Partners. If a quorum is not present for a meeting of Partners within 30 minutes after the time fixed for holding the meeting, the meeting, if convened pursuant to a written request of Limited Partners, will be cancelled, but otherwise will be adjourned to such date not less than five nor more than 21 days after the original date for the meeting as is determined by the General Partner at a time and location determined by the General Partner. A quorum for such adjourned meeting shall be Limited Partners present in person and holding or representing by valid proxy not less than 50% of the outstanding Units.

#### **16.5. Voting**

At a meeting of Partners, each Limited Partner shall be entitled to one vote per Unit held. Fractional Units shall not carry any right to vote. The Chair shall not have a casting vote. Except as provided herein, every question submitted to a meeting shall be decided by an Ordinary Resolution. Every question submitted to a meeting shall be decided by a poll. At any meeting of the Partners the result of a poll taken shall be deemed to be the decision of the meeting on the question or resolution in respect of which the poll was taken.

#### **16.6. Proxies**

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

#### **16.7. Validity of Proxy Vote**

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

#### **16.8. Minutes of Meeting**

Minutes and proceedings of every meeting of the Partners shall be made and recorded by the General Partner. Minutes, when signed by the Chairman of the meeting, shall be *prima facie*

evidence of the matters therein stated. All such minutes shall be kept in the books and records of the Partnership, which shall be made available for inspection by each Partner during normal business hours. Until the contrary is proved, every meeting in respect of which minutes have been made shall be taken to have been duly held and convened and all proceedings referred to in the minutes shall be deemed to have been duly passed or not to have been passed, as the case may be.

#### **16.9. Resolutions Binding**

Any Ordinary Resolution shall be binding on all Limited Partners and their respective heirs, executors, administrators or other legal representatives, successors and assigns, whether or not such Limited Partner was present or represented by proxy at the meeting at which such resolution was passed and whether or not such Person voted against such resolution.

#### **16.10. Electronic Communications**

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

#### **16.11. Resolution in Lieu of Meeting**

A resolution or other instrument in writing signed by Limited Partners holding the requisite number of Units required to pass such resolution is as valid and as effective as if it had been passed at a meeting of the Partners called in accordance with this Agreement.

### **ARTICLE 17 AMENDMENT**

#### **17.1. Amendment**

This Agreement may be amended only in writing and with the consent of the General Partner and the consent of the Limited Partners given by Ordinary Resolution, provided that:

- (a) this Article 17 may not be amended without the unanimous consent of the Limited Partners;
- (b) no amendment shall be made to this Agreement that materially and adversely affects the rights or obligations of a Partner in a manner that discriminates against

such Partner *vis-à-vis* the other Partners (a "**Special Amendment**") without the written consent of such Partner. For greater certainty, (i) an amendment to this Agreement which grants to a Limited Partner (or a Person about to become a Limited Partner) rights or obligations that are similar to some, all or any of the rights or obligations that the Limited Partners have as of the date hereof shall be deemed for all purposes herein not be a Special Amendment and (ii) any amendment that on its terms applies to all Partners shall not be a Special Amendment.

- (c) the General Partner, as required herein may, as appropriate and without the consent of any party, update Schedule "A";
- (d) no amendment shall be made to this Agreement without the unanimous consent of the Limited Partners which would have the effect of changing the Partnership from a limited partnership to a general partnership; and
- (e) Section 7.2 may not be amended without the unanimous consent of the Limited Partners.

#### **17.2. Notice of Amendment**

Limited Partners will be provided with full details of any amendment or proposed amendment, as applicable, to this Agreement under Section 17.1 within ten (10) Business Days after the effective date of the amendment.

### **ARTICLE 18 POWER OF ATTORNEY**

#### **18.1. Power of Attorney of General Partner**

Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner, and any successor to the General Partner under the terms of this Agreement, as its true and lawful attorney and agent, with full power of substitution and authority in the name, place and stead of such Limited Partner to:

- (a) execute, swear to, acknowledge, deliver and file, and record in the appropriate public offices in any jurisdiction where the General Partner considers it appropriate, any and all of:
  - (i) this Agreement and any amendment hereto made in accordance with the terms hereof;
  - (ii) any amendment to the Declaration and all Filings, certificates and other instruments necessary or appropriate to qualify or to continue the qualification of the Partnership as a limited partnership in the Province of Ontario and in each other jurisdiction where the Partnership may conduct its activities or where such qualification is necessary or desirable to maintain limited liability of Limited Partners in that jurisdiction;

- (iii) all Filings, instruments, certificates and any amendment to the Declaration necessary or appropriate to reflect any amendment, change or modification of this Agreement made in accordance with this Agreement;
  - (iv) all conveyances and other instruments, documents and Filings necessary to reflect the dissolution and liquidation of the Partnership in accordance with this Agreement, including cancellation of any Certificate;
  - (v) all instruments relating to the admission of additional or substituted Limited Partners in accordance with this Agreement;
  - (vi) all agreements, instruments and other documents which this Agreement contemplates may be executed, acknowledged, delivered, filed or recorded by the General Partner on behalf of the Limited Partners;
  - (vii) any document or instrument in connection with the Transfer or forfeiture of a Unit contemplated herein; and
  - (viii) all elections, determinations or designations under the Tax Act (including under subsection 98(3) of the Tax Act) or any other taxation or other legislation or laws of like import of Canada or of any provinces or jurisdictions in respect of the affairs of the Partnership or of a Partner's Interest in the Partnership; and
- (b) execute and file with any government body any documents and Filings necessary and appropriate to be filed in connection with the activities of the Partnership or in connection with this Agreement.

## **18.2. Binding of Limited Partners**

Each Limited Partner will be bound by any representation or action made or taken by the General Partner pursuant to the power of attorney in Section 18.1 (other than any representation or action taken or made by the General Partner that is made fraudulently by the General Partner or that is in conflict with the express terms of this Agreement) and waives any and all defenses that may be available to contest, negate or disaffirm any action of the General Partner taken in good faith under such power of attorney.

## **18.3. Power of Attorney Irrevocable**

This power of attorney shall be irrevocable and is a power coupled with an interest and shall bind the Limited Partner, its heirs, executors, administrators and other legal representatives and the successors and assigns of the Limited Partner, notwithstanding the death, dissolution or bankruptcy of the Limited Partner. The granting of these powers of attorney shall not terminate any continuing power of attorney previously granted by the Limited Partner and shall not be terminated by the Limited Partner on the execution of a continuing power of attorney in the future, and the Limited Partner hereby agrees not to take any action in the future which results in the termination of any of these powers of attorney. These powers of attorney shall survive any dissolution or termination of the Partnership.

**18.4. Execution of Documents on Behalf of Limited Partner**

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

**18.5. Compliance by Limited Partners**

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

**ARTICLE 19  
MISCELLANEOUS**

**19.1. Compliance by General Partner**

The General Partner shall conduct the business of the Partnership in compliance in all material respects with all applicable anti-money laundering laws and regulations and to maintain books, records and reports as required by such laws and regulations.

**19.2. Rights of Set-Off**

Notwithstanding anything in this Agreement to the contrary:

- (a) the Partnership and the General Partner shall have the right to set off against any amount that would otherwise have been paid to a Limited Partner hereunder, any amount owing by the Limited Partner to the Partnership, including any amount owing as a result of a breach by the Limited of its obligations hereunder or in connection with any of the Limited Partner's indemnification obligations hereunder;
- (b) the Partnership shall have the right to set off against any amount that would otherwise have been paid to the General Partner hereunder by the Partnership, any amount owing by the General Partner to the Limited Partners, including any amount owing as a result of a breach by the General Partner of its obligations hereunder or in connection with any of the General Partner's indemnification obligations hereunder; and
- (c) in the event at the time of exercise of the right to set off the amount of any liability has not been determined, the Partnership may exercise the right of set off based on its good faith estimate of such liability, subject to an obligation to account once the amount of such liability is finally determined.

### **19.3. Withholding for Taxes**

The General Partner, on behalf of the Partnership will be entitled to deduct or withhold from any amounts otherwise payable to Partners under this Agreement (on a distribution, redemption of Units or otherwise) any amounts the Partnership is required to deduct or withhold with respect to such payment under the Tax Act, or any provision of provincial, state, local or foreign tax law, in each case as amended or superseded. To the extent that amounts are so deducted or withheld, the deducted or withheld amounts will be treated for all purposes as having been paid to the holder of the Units, as applicable, in respect of which such deduction or withholding was made, provided that the deducted or withheld amounts (or equivalent amounts, if applicable) are actually remitted to the appropriate taxing authority. Notwithstanding the foregoing, the General Partner and the Partnership acknowledge the tax exempt status of Six Nations and agree that no amount shall be deducted or withheld pursuant to the *Tax Act* on amounts payable to Six Nations under this Agreement (on a distribution, redemption of Units or otherwise).

In the event that Six Nations is determined, for any reason, not to be tax exempt and NRStor suffers any direct Losses as a result of such non-tax exempt status, agrees to indemnify NRStor for such direct Losses it suffers as a result of Six Nations' non-exempt tax status.

### **19.4. Notices**

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered, faxed or mailed (by certified or registered mail, return receipt requested and first-class postage paid), if to (a) any Limited Partner, at such Limited Partner's address as set out in the Register, and (b) the General Partner or the Partnership, at Suite 345, 101 College Street, Toronto, ON, M5G 2L7. Entire Agreement

This Agreement, together with the Unanimous Shareholder Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other agreements between the Parties with respect to the subject matter hereof, whether oral or written, express or implied, collateral, statutory or otherwise, except as specifically set out in this Agreement or the Unanimous Shareholder Agreement.

### **19.5. Enforceability and Assignment**

Subject to the provisions hereof, this Agreement shall be binding on and enforceable by the parties and their respective successors and permitted assigns. Except as specifically permitted by this Agreement (including in connection with a Transfer of Units in compliance with the requirements hereunder), no party may assign any of its rights or obligations hereunder. To the extent this Agreement provides a right to, or an acknowledgement in favour of, any Person who is not a party hereof, any party hereof related to, associated with or otherwise connected to such Person, or in the absence of such a party, the General Partner, shall hold the benefit of such right or acknowledgement for such Person.

## **19.6. Remedies**

Each party acknowledges that a violation of any provision of this Agreement will result in immediate and irreparable harm to the other parties which cannot be compensated adequately by recovery of damages alone and agrees that, in the event of any such violation or threatened violation, the other parties shall, in addition to any other rights or remedies available at law, in equity or otherwise, be entitled to temporary and permanent injunctive relief, specific performance and other equitable remedies.

## **19.7. Time of Essence**

Time shall be of the essence of this Agreement.

## **19.8. Termination**

This Agreement may be terminated in accordance with its terms or by agreement in writing of all of the parties at the time of such agreement; provided however that no termination shall affect the rights and obligations accrued at such time or set forth in Sections 9.8, 11.2, 11.4, 11.5 and 16.5 and in Article 14, Article 18 and Article 19.

## **19.9. Ceasing to be a Partner**

Upon a Partner ceasing to hold an Interest, such Person shall no longer be a Partner and shall no longer be entitled to the rights and obligations hereunder.

## **19.10. Waiver of Jury Trial**

To the extent not prohibited by applicable law that cannot be waived, each Partner waives, and covenants that such Partner will not assert (whether as plaintiff, defendant or otherwise), any right to trial by jury in any forum in respect of any issue, claim or proceeding arising out of this Agreement or the subject matter hereof or in any way connected with the dealings of any Partner or the Partnership in connection with any of the above, in each case whether now existing or hereafter arising and whether in contract, tort or otherwise. The Partnership or any Partner may file an original counterpart or a copy of this Section 19.10 with any court as written evidence of the consent of the Partners to the waiver of their rights to trial by Jury.

## **19.11. Counterparts**

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

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**SCHEDULE "A"**

**Limited Partners**

<b><u>Name</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Units</u></b>
11456784 Canada Limited	\$50.00	5
NRStor Incorporated	\$50.00	5

**SCHEDULE "B"**

**Unanimous Shareholders Agreement**

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GENERAL PARTNER

**ONEIDA ENERGY STORAGE GP INC.**

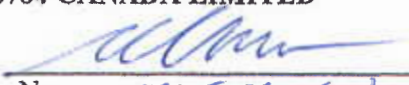
By: \_\_\_\_\_

  
Name: Jason Rioux  
Title: Director

LIMITED PARTNERS


**11456784 CANADA LIMITED**

By: \_\_\_\_\_

  
Name: *MATT JAMISON*  
Title: *PRESIDENT*

**NRSTOR INCORPORATED**

By: \_\_\_\_\_

  
Name: Annette Verschuren  
Title: Chair & CEO