
POWER PURCHASE AGREEMENT

between

WUSKWATIM POWER LIMITED PARTNERSHIP

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD

DATED June 28, 2006

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Schedule A - Arbitrator’s Undertaking

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POWER PURCHASE AGREEMENT

DATED the 28th day of June, 2006

B E T W E E N:

**WUSKWATIM POWER LIMITED PARTNERSHIP,
(hereinafter referred to as the “Limited Partnership”)**

- and -

**THE MANITOBA HYDRO-ELECTRIC BOARD,
(hereinafter referred to as “Hydro”)**

WHEREAS pursuant to the Construction Agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as project manager, Hydro either directly or indirectly through subcontractors will plan, design, engineer, construct and commission the Wuskwatim Project;

AND WHEREAS the Wuskwatim Project will be operated in conjunction with the Integrated Power System;

AND WHEREAS pursuant to the Interconnection and Operating Agreement entered into between Hydro (Transmission and Distribution Business Unit) and Hydro (Power Supply Business Unit) dated May 4, 2005 and subsequently assigned by Hydro (Power Supply Business Unit) to the Limited Partnership, the Wuskwatim Project will be interconnected to the Integrated Power System;

AND WHEREAS pursuant to the Operations and Maintenance Agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as contractor, Hydro will manage the operations and maintenance of the Wuskwatim Project;

AND WHEREAS pursuant to the System Operations and Dispatch Agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, the Limited Partnership granted to Hydro the right and authority to control and operate the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station;

AND WHEREAS the Limited Partnership is willing to sell exclusively to Hydro and Hydro is willing to purchase all of the Net Actual Generation and capacity of the Wuskwatim Generating Station, subject to the terms and conditions and at the rates set forth in this Agreement.

NOW THEREFORE this Agreement witnesses that in consideration of the covenants and agreements herein contained the Parties agree as follows:

ARTICLE I INTERPRETATION

1.1 Defined Terms.

In this Agreement and the preamble hereto, defined terms used herein shall have the following meanings:

“**Additional Costs**” shall have the meaning specified in Section 3.1(8).

“**Affiliate**” means with respect to any Person, any other Person directly or indirectly Controlling, Controlled by or under direct or indirect common Control with, such Person.

“**Adjustments**” shall have the meaning specified in Section 5.1.

“**Agreement**” means this Power Purchase Agreement and the schedules attached hereto and instruments in amendment or confirmation of it; “**hereof**”, “**hereto**” and “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article, Section or other subdivision; “**Article**”, “**Section**” or other subdivision of this Agreement followed by a number refers to the specified Article, Section or other subdivision of this Agreement.

“**Applicable Commissioning Time Period**” shall have the meaning specified in Section 2.6(1)(a).

“**Applicable Long-Term Transactions**” shall have the meaning specified in Section 2.2(1)(c).

“**Applicable Long-Term Transaction Time Period**” shall have the meaning specified in Section 2.2(1)(b).

“**Applicable Off-Peak Opportunity Transactions**” shall have the meaning specified in Section 2.6(1)(b).

“**Applicable On-Peak Opportunity Transactions**” shall have the meaning specified in Section 5.2(a).

“**Applicable Opportunity Transaction Time Period**” shall have the meaning specified in Section 2.2(3)(b).

“**Applicable Opportunity Transactions**” shall have the meaning specified in Section 2.2(3)(c).

“**Applicable Reliability Organization**” means any reliability standards organization whose standards Hydro has contracted to adhere to or having authority in the region in which the Wuskwatim Project is located.

“**Applicant**” shall have the meaning specified in Section 10.4.

“**Arbitrator**” means an arbitrator appointed in accordance with the procedures set out in Article X of this Agreement.

“**Business**” means, the business carried on by the Limited Partnership consisting of the development, ownership, operation and maintenance of the Wuskwatim Project and any activities incidental or related thereto.

“**Business Day**” means any day on which Hydro’s head office is open for business at Winnipeg, Manitoba but in any event shall not include a Saturday, Sunday or statutory or civic holiday in Manitoba.

“**Canadian Dollars**” and “**\$**” each mean lawful money of Canada.

“**Capital Stock**” means, with respect to any Person, any and all shares, interests, participation or equivalent interests in (however designated) the equity (including, without limitation, common shares, preferred shares, trust units and partnership interests) of such Person and any rights (other than debts securities convertible into an equity interest), warrants or options to subscribe for or acquire an equity interest in such Person.

“**Commissioning Energy**” means the actual energy generated by a Generator Unit and delivered to the Point of Interconnection prior to the In-Service Date for that Generator Unit.

“**Construction Agreement**” means the agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, as project manager, whereby Hydro, either directly or indirectly through subcontractors, will design, engineer, construct and commission the Wuskwatim Project, as amended from time to time.

“**Construction Start Date**” shall have the meaning ascribed thereto in the Construction Agreement.

“**Control**” for the purposes of this Agreement, a Person (the “**first Person**”) shall be deemed to be Controlled by another Person or Persons if the Capital Stock of the first Person directly or indirectly held by or for the benefit of the other Person or Persons, acting in concert, other than by way of security only, is either:

- (i) more than 50% of the Capital Stock of the first Person outstanding at the time of such determination; or
- (ii) sufficient to permit the other Person or Persons to replace or elect the majority of the board of directors of the first Person, and “**Controlled**” and “**Controlling**” shall have the corresponding meaning.

“**Dispute**” shall have the meaning specified in Section 10.4.

“**Dispute Notice**” shall have the meaning specified in Section 10.4.

“Energy Charge” means the compensation determined to be payable by Hydro to the Limited Partnership under Section 2.2 or under an Energy Rate Review for the Net Actual Generation received by Hydro at the Point of Interconnection.

“Energy Rate” means the rate per MWh, Hydro will pay to the Limited Partnership in accordance with Sections 2.2(1) and 2.2(3) for the On-Peak Energy and the Off-Peak Energy respectively received by Hydro at the Point of Interconnection.

“Energy Rate Review” means a review conducted in accordance with Article XVII of the PDA of the pricing mechanisms used under this Agreement to determine the Energy Charge.

“Equivalent Canadian Dollar Amount” means, on any day with respect to any amount of U.S. Dollars, the equivalent amount of Canadian Dollars determined by using the Bank of Canada noon spot rate quoted by the CDCFUSD index in Bloomberg to provide Canadian Dollars in exchange for U.S. Dollars at approximately 12 noon (Toronto time) on such day.

“Equivalent U.S. Dollar Amount” means, on any day with respect to any amount of Canadian Dollars, the equivalent amount of U.S. Dollars determined by using the Bank of Canada noon spot rate quoted by the CDCFUSD index in Bloomberg to provide U.S. Dollars in exchange for Canadian Dollars at approximately 12 noon (Toronto time) on such day.

“Event of Hydro Default” shall have the meaning specified in Section 9.3.

“Event of Limited Partnership Default” shall have the meaning specified in Section 9.1.

“Expert” means an expert appointed pursuant to the PDA to conduct an Energy Rate Review or a Transaction Rate Review.

“Final Closing Date” shall have the meaning ascribed thereto in the PDA.

“First Operating Month” means the month during which the first Generator Unit is In-Service.

“**GAAP**” means, at any time, generally accepted accounting principles in Canada as recommended in the Handbook of the Canadian Institution of Chartered Accountants, or any successor Person at such time.

“**General Partner**” means 5022649 Manitoba Ltd. in its capacity as general partner of the Limited Partnership pursuant to the terms of the Limited Partnership Agreement.

“**Generator Units**” means the three units, each consisting of a vertical-shaft, fixed blade propeller-type turbine and vertical umbrella-type generator to be installed as part of the Wuskwatim Project pursuant to the Construction Agreement and “**Generator Unit**” means any of the Generator Units.

“**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

“**Governmental Authority**” means any federal, provincial, local or other governmental, regulatory or administrative agency, court, commission, department, board or other governmental subdivision, legislature, rulemaking board, tribunal, or arbitration body having jurisdiction over either Party.

“**GWh**” means gigawatt-hours.

“**Hydro**” means The Manitoba Hydro-Electric Board, a Crown corporation continued by the *Hydro Act*.

“**Hydro Act**” means *The Manitoba Hydro Act*, R.S.M. 1987, c. H190, as amended from time to time.

“Hydro Contractual Obligation” means any provision of any agreement, instrument or written undertaking to which Hydro is a party or by which it or any of its Property is bound, which materially impacts on the Integrated Power System and was entered into without regard to the ownership of the Wuskwatim Project and the existence of this Agreement.

“Hydro Financial Year” means, the financial year of Hydro, currently commencing on April 1 of each calendar year and ending on March 31 of the next calendar year.

“Hydro High Voltage Transmission System” means that portion of the Hydro Transmission System designated by Hydro, as such, from time to time.

“Hydro High Voltage Transmission System Energy Losses” shall have the meaning specified in Section 4.1.

“Hydro Metering Equipment” shall have the meaning specified in Section 4.2(1).

“Hydro Transmission System” means the transmission facilities owned and operated or operated by Hydro which are a component of the Integrated Power System.

“Initial Closing Date” shall have the meaning ascribed thereto in the PDA.

“Initial Limited Partnership Agreement” means the limited partnership agreement entered into between the General Partner, and Hydro in its capacity as limited partner, dated the 9th day of December, 2004.

“In-Service Date” means, in respect of a particular Generator Unit, the date on which the particular Generator Unit is fully commissioned and comes into service as evidenced by a commissioning certificate issued in respect of that unit by Hydro’s commissioning engineer and **“In-Service”** means, in respect of a Generator Unit, when that particular Generator Unit is fully commissioned and comes into service as evidenced by a commissioning certificate issued in respect of that unit by Hydro’s commissioning engineer.

“Insufficient Long-Term Transaction Year” shall have the meaning ascribed thereto in Section 5.2.

“Insufficient Transactions” means, in respect of the Long-Term Transaction Rate at any time, less than a total of 800 GWh of energy bought or sold pursuant to the Long-Term Transactions applicable at that time and in respect of the Opportunity Transaction Rate at any time, less than a total of 1500 GWh of energy bought or sold pursuant to the Opportunity Transactions applicable at that time.

“Integrated Power System” means the system of hydraulic and thermal electric generation and power transmission facilities owned and operated or operated by Hydro, which system is interconnected with other power utilities.

“Interconnection and Operating Agreement” means the Interconnection and Operating Agreement entered into between Hydro (Transmission and Distribution Business Unit) and Hydro (Power Supply Business Unit) dated May 4, 2005, as amended or replaced from time to time and subsequently assigned by Hydro (Power Supply Business Unit) to the Limited Partnership, whereby the Wuskwatim Project will be interconnected to the Integrated Power System.

“Laws” means all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which such word is used; and **“Law”** means any one of such Laws.

“Licences” means all authorizations, approvals, consents, registrations and certificates required by any Governmental Authority for the construction, operation or maintenance of the Wuskwatim Project.

“Limited Partner” means one of Hydro and Taskinigahp Power Corporation as the context requires, in their capacity as limited partners of the Limited Partnership and **“Limited Partners”** means both of Hydro and Taskinigahp Power Corporation in their capacity as limited partners of the Limited Partnership.

“Limited Partnership” means the Wuskwatim Power Limited Partnership created pursuant to the Initial Limited Partnership Agreement as amended and restated by the

Limited Partnership Agreement, for the purposes of owning and directly or indirectly planning, designing, constructing, operating and maintaining the Wuskwatim Project.

“Limited Partnership Agreement” means the limited partnership agreement amending and restating the Initial Limited Partnership Agreement, dated even date herewith between the General Partner in its capacity as General Partner and Hydro and Taskinigahp Power Corporation as limited partners.

“Limited Partnership Contractual Obligation” means any provision of any agreement, instrument or undertaking to which the Limited Partnership is a party or by which it or any of its Property is bound.

“Long-Term Transaction Rate” shall have the meaning specified in Section 2.2(1).

“Long-Term Transactions” means all written agreements or undertakings between Hydro and a Person, other than an Affiliate of Hydro, for the purchase or sale of energy and capacity, which meets the following criteria:

- (i) Hydro is pursuant to the written agreement or undertaking exporting or importing energy to or from electricity markets outside of Manitoba;
- (ii) the written agreement or undertaking is entered into on or after the Initial Closing Date;
- (iii) the seller under the written agreement or undertaking has included the commitments made under the written agreement or undertaking, as a factor in the operation, planning and development of its energy system, in order to maintain sufficient resources to meet those commitments; and either:
- (iv) the time period between the date the written agreement or undertaking is entered into on and the date energy is first supplied pursuant to the written agreement or undertaking is at least 365 days in duration; or

- (v) if the aforesaid time period is less than 365 days, but the written agreement or undertaking has a component whereby energy will be supplied 365 days after the date the written agreement or undertaking is entered into, that component of the written agreement, or undertaking shall be included as part of the Long-Term Transactions.

“Material Adverse Business Effect” means a material adverse effect (or a series of adverse effects, none of which is material in and of itself, but which cumulatively results in a material adverse effect) that precludes or materially restricts the ability of the Limited Partnership from performing any of its obligations under this Agreement.

“MWh” means megawatt-hours.

“Net Actual Generation” means the actual energy generated by the Wuskwatim Project during the applicable period less any energy generated which is used for the Wuskwatim Project’s station service or auxiliaries but includes only the energy generated from each Generator Unit after its In-Service Date. (For greater certainty Net Actual Generation includes only On-Peak Energy and Off-Peak Energy and does not include Commissioning Energy).

“Notice” means any notice, citation, directive, request for information, writ, summons and statement of claim or other communication from any Person.

“Off-Peak Energy” means that portion of the Net Actual Generation delivered by the Wuskwatim Project to the Point of Interconnection during Off-Peak Hours.

“Off-Peak Hours” means the period of time which is not included in the On-Peak Hours.

“Off-Peak Opportunity Transactions” means those Opportunity Transactions where the sale or purchase of energy and capacity is in respect of energy sold or received only during the Off-Peak Hours. If an Opportunity Transaction includes energy sold or received during Off-Peak Hours and On-Peak Hours, it means only those provisions of that Opportunity Transaction that are applicable to the energy sold or received only during the Off-Peak Hours.

“**Off-Peak Opportunity Transaction Rate**” shall have the meaning specified in Section 2.6(1).

“**On-Peak Energy**” means that portion of the Net Actual Generation delivered by the Wuskwatim Project to the Point of Interconnection during On-Peak Hours.

“**On-Peak Hours**” means the period of time between 6:00 a.m. and 10:00 p.m. central standard time, Monday through Friday excluding holidays designated by the North American Electric Reliability Council or any successor agency.

“**On-Peak Opportunity Transaction Rate**” shall have the meaning specified in Section 5.2.

“**On-Peak Opportunity Transactions**” means those Opportunity Transactions where the sale or purchase of energy is in respect of energy sold or received only during the On-Peak Hours. If the Opportunity Transaction includes energy sold or received during the Off-Peak Hours and the On-Peak Hours, it means those provisions of that Opportunity Transaction that are applicable to the energy sold or received only during the On-Peak Hours.

“**Operations and Maintenance Agreement**” means an agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project and Hydro, whereby Hydro will manage the operations and maintenance of the Wuskwatim Project, as amended or replaced from time to time.

“**Opportunity Transaction Rate**” shall have the meaning specified in Section 2.2(3).

“**Opportunity Transactions**” means all agreements or undertakings between Hydro and a Person, other than an Affiliate of Hydro, for the sale or purchase of energy and capacity which meets the following criteria:

- (i) the agreement or undertaking is entered into on or after the Initial Closing Date;
- (ii) the agreement or undertaking is not a Long-Term Transaction; and

- (iii) Hydro is pursuant to the agreement or undertaking exporting or importing energy to or from electricity markets outside of Manitoba.

“**PDA**” means the Project Development Agreement dated June 26, 2006 made between Nisichawayasihk Cree Nation, Hydro, Taskinigahp Power Corporation, the General Partner and the Limited Partnership.

“**Party**” means either the Limited Partnership or Hydro and “**Parties**” means both the Limited Partnership and Hydro.

“**Person**” means an individual, partnership, corporation, trust, unincorporated association, syndicate, joint venture or other entity or Governmental Authority, and pronouns have a similarly extended meaning.

“**Point of Interconnection**” shall mean the point on the output (high) side of the step up transformer located on the tail race deck of the Wuskwatim Generating Station at which each of the Generator Units connects to one of the three 230 kV transmission lines running from the Wuskwatim Generating Station to the switching station.

“**Pricing Criteria**” shall have the meaning specified in Section 6.3.

“**Pricing Principle**” shall have the meaning specified in Section 6.2.

“**Property**” means, with respect to any Person, any interest of such Person in any land or property or asset of every kind, wherever situate, whether now owned or hereafter acquired, whether real or immovable, personal, movable or mixed, tangible or corporeal, intangible or incorporeal, including Capital Stock in any other Person.

“**Reply**” shall have the meaning specified in Section 10.5.

“**Respondent**” shall have the meaning specified in Section 10.5.

“**System Operations and Dispatch Agreement**” means an agreement dated even date herewith, between the Limited Partnership and Hydro whereby Hydro will control and operate the Wuskwatim Project on behalf of the Limited Partnership, including matters related to the dispatch of the Wuskwatim Generating Station as amended or replaced from time to time.

“**Term**” means the initial Term of this Agreement as specified in Section 2.7(1) plus any extension of the Term pursuant to Section 2.7(2).

“**Transaction Rate Review**” means a review conducted in accordance with Article XVII of the PDA of the determination, allocation and adjustments made by Hydro pursuant to Sections 2.2(1)(c), (d) and (e) and 2.2(3)(c), (d) and (e) in the calculation, from time to time, of the Long-Term Transaction Rate and the Opportunity Transaction Rate.

“**Transmission Owner Interconnection Facilities**” shall have the meaning ascribed thereto in the Interconnection and Operating Agreement.

“**U.S. Dollars**” means lawful money of the United States of America.

“**Wuskwatim Generating Station**” shall have the meaning ascribed thereto in the PDA.

“**Wuskwatim Project**” shall have the meaning ascribed thereto in the PDA.

1.2 Interpretation.

This Agreement shall be interpreted in accordance with the following:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) headings are inserted for convenience only and shall not affect the interpretation of this Agreement, or any provisions hereof;
- (c) references to dollars, unless otherwise specifically indicated, shall be references to Canadian Dollars;
- (d) the word “including” shall mean “including without limitation” and “includes” shall mean “includes without limitation”;
- (e) the expressions “the aggregate”, “the total”, “the sum” and expressions of similar meaning shall mean “the aggregate (or total or sum) without duplication”;

- (f) in the computation of periods of time, unless otherwise expressly provided, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”; and
- (g) accounting terms not specifically defined shall be construed in accordance with GAAP.

1.3 Severability.

If any provision of this Agreement is, or becomes, illegal, invalid or unenforceable, such provision shall be severed from this Agreement and be ineffective to the extent of such illegality, invalidity or unenforceability. The remaining provisions hereof shall be unaffected by such provision and shall continue to be valid and enforceable.

1.4 Entire Agreement.

This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties relating to the subject matter hereof and entered into prior to the date of this Agreement.

1.5 Waiver.

No failure on the part of a Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right; nor shall any waiver of one provision be deemed to constitute a waiver of any other provision (whether or not similar). No Notice to or demand on the Limited Partnership in any case shall entitle it to any Notice or demand in similar or other circumstances. No waiver of any of the provisions of this Agreement shall be effective unless it is in writing duly executed by the waiving Party.

1.6 No Presumption.

The Parties have endeavoured to ensure that the terms of this Agreement are as clear as possible and in interpreting this Agreement and except where expressly provided there shall be no presumption in favour of or against any Party.

1.7 Governing Law.

This Agreement shall be governed by, and interpreted in accordance with, the Laws of Manitoba and the Laws of Canada applicable therein.

1.8 Incorporation of Schedules.

The following schedules attached shall, for all purposes hereof, be incorporated in and form an integral part of this Agreement:

Schedule A	-	Arbitrator's Undertaking
Schedule B	-	Notices

1.9 Acknowledgement.

The Parties acknowledge that the Limited Partnership is a limited partnership formed under the Laws of Manitoba, a limited partner of which is only liable for any of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership and the limited partner's pro rata share of any undistributed income. The Parties acknowledge that the obligations of the Limited Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners, their successors and assigns, and that resort shall only be had to the property of the Limited Partnership or the property of its general partner. The General Partner is the sole general partner of the Limited Partnership. Nothing in this Agreement shall be deemed to detract from or limit or restrict in any way the limited liability of any limited partner of the Limited Partnership.

ARTICLE II

SALE AND PURCHASE OF ENERGY

2.1 Net Actual Generation.

- (1) Subject to the terms and conditions of this Agreement, the Limited Partnership agrees to sell and Hydro agrees to purchase the Net Actual Generation and capacity of the Wuskwatim Project.

- (2) The Limited Partnership agrees that it shall not enter into any agreement or instrument or undertake to sell and it shall not sell any energy or capacity from the Wuskwatim Project to any Person other than Hydro.

2.2 Energy Charge.

Subject to the terms and conditions of this Agreement including adjustments, if any, provided for in Articles V and VI, the Limited Partnership shall be compensated by Hydro for the Net Actual Generation received by Hydro at the Point of Interconnection, on a Canadian Dollar per MWh basis, determined in the following manner:

On-Peak Energy

- (1) Hydro shall pay to the Limited Partnership each month in the manner hereinafter set forth, subject to the adjustments provided for in this Agreement and the set-off of all amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), for the On-Peak Energy received by Hydro at the Point of Interconnection, during any particular Hydro Financial Year, based on a rate that is equal to the actual weighted average price over a twelve (12) month period, that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, for the energy and capacity, purchased or sold by Hydro, pursuant to all applicable Long-Term Transactions during that twelve (12) month period (the “**Long-Term Transaction Rate**”) determined in the following manner:
- (a) the Long-Term Transaction Rate will be determined for each month during the Hydro Financial Year;
 - (b) the twelve (12) month time period shall be comprised of the month for which the rate is being determined plus the prior eleven (11) months (the “**Applicable Long-Term Transaction Time Period**”);
 - (c) only those Long-Term Transactions or portions thereof applicable to the time period where the energy sold or purchased physically crossed the Manitoba border and were delivered during the Applicable Long-Term Transaction Time

Period, as determined by Hydro in accordance with Good Utility Practice, (the “**Applicable Long-Term Transactions**”) shall be included in determining the actual weighted average price over the Applicable Long-Term Transaction Time Period;

- (d) Hydro, acting reasonably, in addition to all other allocations or adjustments that may be required, shall include the portion of the price, if any, that is payable for capacity, which is attributable to that portion of the energy that physically crossed the Manitoba border and was delivered during the Applicable Long-Term Transaction Time Period for each of the Applicable Long-Term Transactions in determining the actual average weighted price over the Applicable Long-Term Transaction Time Period;
- (e) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable Long-Term Transactions shall be adjusted by Hydro, acting reasonably to reflect the price at the Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable Long-Term Transactions. The charges or credits will include actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but shall not include Hydro’s administrative and general overhead costs and expenses or any costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement;
- (f) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable Long-Term Transactions shall be determined in Canadian Dollars per MWh and if Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid in U.S. Dollars pursuant to any of the Applicable Long-Term Transactions, the amounts shall be converted to Canadian Dollars (after the adjustments referred to in this Section 2.2(1)) by reference to the Equivalent Canadian Dollar Amount on the last Business Day of the month, during which the said obligation to pay, or the entitlement to be paid the said amount arises; and

- (g) the Long-Term Transaction Rate shall be expressed in Canadian Dollars per MWh and shall be calculated by dividing (i) the total net amount that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, pursuant to the Applicable Long-Term Transactions, determined in accordance with this Section 2.2(1); by (ii) the total energy that was imported or exported by Hydro pursuant to the Applicable Long-Term Transactions, determined in accordance with this Section 2.2(1).
- (2) The monthly amount to be paid to the Limited Partnership for the On-Peak Energy shall be calculated as follows:

First Operating Month

- (a) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of the First Operating Month with the Long-Term Transaction Rate determined for that month. The amount to be paid for the On-Peak Energy received by Hydro from the Final Closing Date to the last day of the First Operating Month, subject to subsequent adjustment, if any, pursuant to Article V, and the set-off of all amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), shall be equal to:
- (i) the Long-Term Transaction Rate, determined for the First Operating Month; multiplied by
 - (ii) the On-Peak Energy received by Hydro during that period, as determined pursuant to Section 4.1.

First Operating Year

- (b) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of each subsequent month during the Hydro Financial Year in which the First Operating Month occurs (except where that month is the last month of the Hydro Financial Year in which case the period of time shall be extended to fifteen (15) Business Days) with the Long-Term Transaction Rate determined for each month. The amount to be paid for the On-Peak Energy received by Hydro during those months, subject to subsequent adjustment, if any, pursuant to Article V, and

the set-off of all unpaid amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), shall be equal to:

- (i) the Long-Term Transaction Rate determined for the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(2)(b); multiplied by
- (ii) the On-Peak Energy received by Hydro during that period of time from the Final Closing Date to the last day of the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(2)(b), as determined in accordance with the provisions of Section 4.1; less
- (iii) all amounts Hydro has paid or is obligated to pay pursuant to Sections 2.2(2)(a) and 2.2(2)(b) for the On-Peak Energy received by Hydro during the period of time, from the Final Closing Date to the last day of the month, in that Hydro Financial Year immediately prior to the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(2)(b).

Subsequent Operating Years

- (c) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of each month during each subsequent Hydro Financial Year (except where that month is the last month of a Hydro Financial Year in which case the period of time shall be extended to fifteen (15) Business Days) with the Long-Term Transaction Rate determined for each month. The amount to be paid for the On-Peak Energy received by Hydro during each month within a Hydro Financial Year, subject to subsequent adjustment, if any, pursuant to Article V and the set-off of all unpaid amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), shall be equal to:
 - (i) the Long-Term Transaction Rate determined for the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(2)(c); multiplied by

- (ii) the On-Peak Energy received by Hydro during that period of time from the first day of the applicable Hydro Financial Year to the last day of the particular month in that Hydro Financial Year in respect of which the payment amount is to be calculated pursuant to this Section 2.2(2)(c), as determined in accordance with the provisions of Section 4.1; less
- (iii) all amounts Hydro has paid or is obligated to pay pursuant to this Section 2.2(2)(c) for the On-Peak Energy received by Hydro during the period of time, from the first day of the applicable Hydro Financial Year to the last day of the month in that Hydro Financial Year, immediately prior to the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(2)(c).

Off-Peak Energy

- (3) Hydro shall pay to the Limited Partnership in the manner hereinafter set forth, subject to the adjustments provided for in this Agreement and the set-off of all amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), for the Off-Peak Energy received by Hydro at the Point of Interconnection, during any particular Hydro Financial Year, based on a rate that is equal to the actual weighted average price over a twelve (12) month period that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, for the energy and capacity purchased or sold by Hydro pursuant to all applicable Opportunity Transactions during that twelve (12) month period (the “**Opportunity Transaction Rate**”) determined in the following manner:
 - (a) the Opportunity Transaction Rate will be determined for each month during the Hydro Financial Year;
 - (b) the twelve (12) month time period shall be comprised of the month for which the rate is being determined plus the prior eleven (11) months (the “**Applicable Opportunity Transaction Time Period**”);
 - (c) only those Opportunity Transactions or portions thereof applicable to the time period where the energy sold or purchased physically crossed the Manitoba

border and were delivered during the Applicable Opportunity Transaction Time Period, as determined by Hydro in accordance with Good Utility Practice, (the “**Applicable Opportunity Transactions**”) shall be included in determining the actual weighted average price over the Applicable Opportunity Transaction Time Period;

- (d) Hydro, acting reasonably, in addition to all other allocations or adjustments that may be required, shall include the portion of the price, if any, that is payable for capacity, which is attributable to that portion of the energy that physically crossed the Manitoba border and was delivered during the Applicable Opportunity Transaction Time Period for each of the Applicable Opportunity Transactions in determining the actual average weighted price over the Applicable Opportunity Transaction Time Period;
- (e) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable Opportunity Transactions shall be adjusted by Hydro, acting reasonably to reflect the price at the Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable Opportunity Transactions. The charges or credits will include actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but shall not include Hydro’s administrative and general overhead costs and expenses or any costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement;
- (f) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable Opportunity Transactions shall be determined in Canadian Dollars per MWh and if Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid in U.S. Dollars pursuant to any of the Applicable Opportunity Transactions, the amounts shall be converted to Canadian Dollars (after the adjustments referred to in this Section 2.2(3)) by reference to the Equivalent Canadian Dollar Amount on the last Business Day of

the month, during which the said obligation to pay, or the entitlement to be paid the said amount arises; and

- (g) the Opportunity Transaction Rate shall be expressed in Canadian Dollars per MWh and shall be calculated by dividing (i) the total net amount that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, pursuant to the Applicable Opportunity Transactions, determined in accordance with this Section 2.2(3); by (ii) the total energy that was imported or exported by Hydro pursuant to the Applicable Opportunity Transactions, determined in accordance with this Section 2.2(3).
- (4) The monthly amount to be paid to the Limited Partnership for the Off-Peak Energy shall be calculated as follows:

First Operating Month

- (a) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of the First Operating Month with the Opportunity Transaction Rate determined for that month. The amount to be paid for the Off-Peak Energy received by Hydro from the Final Closing Date to the last day of the First Operating Month, subject to subsequent adjustment, if any, pursuant to Article V, and the set-off of all unpaid amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), shall be equal to:
 - (i) the Opportunity Transaction Rate, determined for the First Operating Month; multiplied by
 - (ii) the Off-Peak Energy received by Hydro during that period, as determined pursuant to Section 4.1.

First Operating Year

- (b) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of each subsequent month during the Hydro Financial Year in which the First Operating Month occurs (except where that month is the last month of the Hydro Financial Year in which case the period of time shall be extended to fifteen

(15) Business days) with the Opportunity Transaction Rate determined for each month. The amount to be paid for the Off-Peak Energy received by Hydro during those months, subject to subsequent adjustment, if any, pursuant to Article V and the set-off of all unpaid amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), shall be equal to:

- (i) the Opportunity Transaction Rate determined for the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(4)(b); multiplied by
- (ii) the Off-Peak Energy received by Hydro during that period of time from the Final Closing Date to the last day of the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(4)(b), as determined in accordance with the provisions of Section 4.1; less
- (iii) all amounts Hydro has paid or is obligated to pay pursuant to Sections 2.2(4)(a) and 2.2(4)(b) for the Off-Peak Energy received by Hydro during the period of time, from the Final Closing Date to the last day of the month in that Hydro Financial Year immediately prior to the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(4)(b).

Subsequent Operating Years

- (c) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of each month during each subsequent Hydro Financial Year (except where that month is the last month of a Hydro Financial Year in which case the period of time shall be extended to fifteen (15) Business Days) with the Opportunity Transaction Rate determined for each month. The amount to be paid for the Off-Peak Energy received by Hydro during each month within a Hydro Financial Year, subject to subsequent adjustment, if any, pursuant to Article V, and the set-off of all unpaid amounts the Limited Partnership is obligated to pay to Hydro pursuant to the provisions of Section 3.1(11), shall be equal to:
- (i) the Opportunity Transaction Rate determined for the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(4)(c); multiplied by
 - (ii) the Off-Peak Energy received by Hydro during that period of time from the first day of the applicable Hydro Financial Year to the last day of the particular month in that Hydro Financial Year in respect of which the payment amount is to be calculated pursuant to this Section 2.2(4)(c), as determined in accordance with the provisions of Section 4.1; less
 - (iii) all amounts Hydro has paid or is obligated to pay pursuant to Section 2.2(4)(c) for the Off-Peak Energy received by Hydro during the period of time, from the first day of the applicable Hydro Financial Year to the last day of the month in that Hydro Financial Year, immediately prior to the particular month in respect of which the payment amount is to be calculated pursuant to this Section 2.2(4)(c).

2.3 U.S. Dollar Conversion Option.

The Limited Partnership can if it has provided written notice to Hydro on or before the last Business Day of any particular month require that a percentage not exceeding fifty percent (50%) of the amount that would otherwise be billed to Hydro in Canadian Dollars in accordance with Sections 2.2 and 8.1(2), for the Net Actual Generation received by Hydro

during that month, be converted to U.S. Dollars, by reference to the Equivalent U.S. Dollar Amount as of the last Business Day of that month and that amount shall be paid to the Limited Partnership, in U.S. Dollars, by the dates specified in accordance with Section 8.1(3).

2.4 Acknowledgement of Limited Partnership.

The Limited Partnership expressly acknowledges and agrees that:

- (a) the compensation to be paid under this Agreement entitles Hydro to receive all the capacity and the energy from the Wuskwatim Project;
- (b) the rates and compensation to be paid in this Agreement, subject to Section 2.5, is based on the Net Actual Generation actually received by Hydro at the Point of Interconnection; and
- (c) the Limited Partnership is not entitled to an additional payment or separate rate for the capacity of the Wuskwatim Project which Hydro is entitled to receive pursuant to this Agreement.

2.5 Insufficiency of Capacity or Disruption or Failure of the Hydro Transmission System.

Notwithstanding any other provision of this Agreement, if the Net Actual Generation cannot be generated and delivered to the Point of Interconnection primarily due to insufficient capacity of the Hydro Transmission System or the disruption to or failure of the Hydro Transmission System and as a direct consequence thereof, water is spilled at the Wuskwatim Project spillway, Hydro shall be deemed for the purposes of this Agreement to have received the energy that could have been generated from the water that was spilled at the Wuskwatim Project spillway during that time period less the applicable Hydro High Voltage Transmission System Energy Losses. This Section 2.5 shall not apply and Hydro shall not be deemed for the purposes of this Agreement or otherwise to have received energy that was not generated and delivered to the Point of Interconnection if the insufficient capacity of the Hydro Transmission System, disruption to or failure of the Hydro Transmission System occurred as a result of or was primarily due to: (i) a breach by the Limited Partnership of any provision of the Limited Partnership's Contractual Obligation; or (ii) any act or omission reasonably associated

with the provisions of the Construction Agreement, the System Operations and Dispatch Agreement or the Operations and Maintenance Agreement, including without limiting the generality of the foregoing in respect of services or work performed or to be performed by Hydro under the provisions of those Agreements or the breach by Hydro of any provision of those Agreements. If this Section 2.5 is applicable, Hydro shall provide to the Limited Partnership a calculation of the amount of energy that could have been generated and delivered during the applicable time period from the water that was spilled using the best information and data available and Hydro shall be required to pay to the Limited Partnership the amount that would otherwise be determined to be owing pursuant to the provisions of this Agreement (after all set-offs, deductions and adjustments provided for in this Agreement including adjustment for the Hydro High Voltage Transmission System Energy Losses applicable for the period of time during which water was spilled) if that amount of energy had been generated and delivered to the Hydro Transmission System during that period of time from the water that was spilled. The Limited Partnership expressly acknowledges that the risk of the Limited Partnership not being able to generate and deliver energy to the Point of Interconnection from all other matters or circumstances is borne solely by the Limited Partnership.

2.6 Commissioning Energy.

- (1) Subject to the terms and conditions of this Agreement the Limited Partnership shall be compensated by Hydro for the Commissioning Energy received by Hydro at the Point of Interconnection on a Canadian Dollar per MWh basis during any particular month, based on a rate that is equal to the actual weighted average price for that month that Hydro, as purchaser is obligated to pay or Hydro, as seller, is entitled to be paid, for the energy and capacity, purchased or sold by Hydro pursuant to all applicable Off-Peak Opportunity Transactions during that month (the “**Off-Peak Opportunity Transaction Rate**”) determined in the following manner:
 - (a) the Off-Peak Opportunity Rate will be determined for each month during the Hydro Financial Year that Commissioning Energy (the “**Applicable Commissioning Time Period**”) is received by Hydro;

- (b) only those Off-Peak Opportunity Transactions or portions thereof applicable to the time period where the energy sold or purchased physically crossed the Manitoba border and were delivered during the Applicable Commissioning Time Period, as determined by Hydro in accordance with Good Utility Practice, (the “**Applicable Off-Peak Opportunity Transactions**”) shall be included in determining the actual weighted average price for the Applicable Commissioning Time Period;
- (c) Hydro, acting reasonably, in addition to all other allocations or adjustments that may be required, shall include the portion of the price, if any, that is payable for capacity, which is attributable to that portion of the energy that physically crossed the Manitoba border and was delivered during the Applicable Commissioning Time Period for each of the Applicable Off-Peak Opportunity Transactions in determining the actual average weighted price over the Applicable Commissioning Time Period;
- (d) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable Off-Peak Opportunity Transactions shall be adjusted to reflect the price at the Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable Off-Peak Opportunity Transactions. The charges or credits will include actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but shall not include Hydro’s administrative and general overhead costs and expenses or any costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement;
- (e) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable Off-Peak Opportunity Transactions shall be determined in Canadian Dollars per MWh and if Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid in U.S. Dollars pursuant to any of the Applicable Off-Peak Opportunity Transactions, the amounts shall be converted to Canadian Dollars (after the adjustments referred to in Section 2.6),

by reference to the Equivalent Canadian Dollar Amount on the last Business Day of the month, during which the said obligation to pay, or the entitlement to be paid the said amount arises; and

- (f) the Off-Peak Opportunity Transaction Rate shall be expressed in Canadian Dollars per MWh and shall be calculated by dividing (i) the total net amount that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, pursuant to the Applicable Off-Peak Opportunity Transactions, determined in accordance with this Section 2.6; by (ii) the total energy that was imported or exported by Hydro pursuant to the Applicable Off-Peak Opportunity Transactions, determined in accordance with this Section 2.6.
- (2) The monthly amount to be paid to the Limited Partnership shall be calculated as follows:
- (a) Hydro shall provide the Limited Partnership within ten (10) Business Days of the last day of each month during which Commissioning Energy is generated and received by Hydro at the Point of Interconnection with the Off-Peak Opportunity Transaction Rate determined for that month. The amount to be paid for the Commissioning Energy received by Hydro shall be equal to:
 - (i) the Off-Peak Opportunity Transaction Rate, determined for that month; multiplied by
 - (ii) the Commissioning Energy received by Hydro during that month, as determined pursuant to Section 4.1.

Hydro shall credit the Limited Partnership with the monthly amount that is to be paid for the Commissioning Energy pursuant to this Section 2.6, on account of the Limited Partnership's indebtedness under the terms of the Construction Agreement and the Limited Partnership shall be entitled to set-off this credit against its indebtedness under the Construction Agreement.

2.7 Term.

- (1) The Term of this Agreement shall become effective on the Construction Start Date and shall continue for a period of twenty-five (25) years from the Final Closing Date unless extended under Section 2.7(2) or terminated pursuant to the provisions of this Agreement.
- (2) The Term of this Agreement shall automatically be extended for periods of twenty-five (25) years each, prior to the expiry of the Term subject to the condition that for the period of time for which the Term is to be extended: (i) Hydro or an Affiliate of Hydro must have an agreement with the Limited Partnership to operate and dispatch the Wuskwatim Project on substantially the same terms and conditions as those contained in the System Operations and Dispatch Agreement, or the Term shall be extended, subject to such amendments to the terms and conditions of this Agreement as Hydro acting reasonably may require if Hydro or an Affiliate of Hydro is not operating and controlling the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station on substantially the same terms and conditions as those contained in the System Operations and Dispatch Agreement or if any other Person is operating and controlling the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station; and (ii) Hydro or an Affiliate of Hydro must have an agreement with the Limited Partnership to maintain and operate the Wuskwatim Project on substantially the same terms and conditions as those contained in the Operations and Maintenance Agreement, or the Term shall be extended, subject to such amendments to the terms and conditions of this Agreement as Hydro acting reasonably may require if Hydro or an Affiliate of Hydro is not operating and maintaining on substantially the same terms and conditions in the Operations and Maintenance Agreement or if any other Person is maintaining and operating the Wuskwatim Project.
- (3) Upon expiry of the Term or upon the termination of this Agreement, Hydro shall have no future or further obligation to purchase the Net Actual Generation and capacity of the Wuskwatim Generating Station or to make any payment

whatsoever to the Limited Partnership and except for Hydro's and the Limited Partnership's rights and obligations arising prior to the expiry of the Term, the rights and obligations of the Parties hereunder shall end and the Limited Partnership shall be entitled to sell the energy and capacity of the Wuskwatim Generating Station to another party. This Agreement shall not be construed to provide a residual value to either the Limited Partnership or Hydro or to any Person, for the right to use or benefit from the Limited Partnership's or Hydro's Property or the Integrated Power System following the expiry of the Term.

ARTICLE III AFFIRMATIVE COVENANTS

3.1 Covenants.

During the Term of this Agreement and any extension thereof, the Limited Partnership hereby agrees to be bound by and to perform each of the following affirmative obligations:

- (1) **Design, Engineering, Construction and Commissioning of the Wuskwatim Project.** At the Limited Partnership's sole expense, the Limited Partnership shall engage Hydro under the Construction Agreement to design, engineer, construct, install and commission the Wuskwatim Project in accordance with the provisions of the Construction Agreement, the Interconnection and Operating Agreement and any additional reasonable requirements or criteria of Hydro, communicated by Hydro to the Limited Partnership.
- (2) **Licences.** The Limited Partnership shall seek, obtain, maintain, comply with and as necessary, review and modify from time to time, at the Limited Partnership's sole expense, the Licences.
- (3) **Maintenance and Operation of the Wuskwatim Project.** The Limited Partnership shall operate, maintain and repair at the Limited Partnership's sole expense, the Wuskwatim Project in accordance with the reasonable guidelines, procedures, decisions, practices and policies of Hydro (or any Affiliate of Hydro) as amended from time to time and communicated by Hydro to the Limited

Partnership and in accordance with the provisions of the Limited Partnership Contractual Obligations.

(4) **Applicable Reliability Organization and Governmental Authority.** The Limited Partnership shall at the Limited Partnership's sole expense:

- (a) cooperate to a reasonable extent with Hydro in fulfilling Hydro's duties and obligations (or the duties and obligations of any Affiliate of Hydro) as a participant in the Applicable Reliability Organization and pursuant to the Hydro Contractual Obligations, as amended from time to time in the same manner and to the same extent as Hydro (or any Affiliate of Hydro), as Hydro may advise;
- (b) cooperate with and provide in a timely manner any and all information or data required by the Applicable Reliability Organization or by Hydro for the Applicable Reliability Organization and any other necessary approvals related to the Wuskwatim Project, as Hydro may advise;
- (c) comply with the Applicable Reliability Organization procedures, decisions and policies, as Hydro may advise;
- (d) be bound by those requirements, decisions and policies of the Applicable Reliability Organization, as Hydro may advise, and those Hydro Contractual Obligations as amended from time to time, in the same manner and to the same extent as Hydro (or any Affiliate of Hydro), as Hydro may advise; and
- (e) reimburse Hydro for actual costs and expenses imposed on Hydro (or any Affiliate of Hydro) by the Applicable Reliability Organization or Government Authority or pursuant to the Hydro Contractual Obligations which are associated with this Agreement or the Wuskwatim Project and any filing fees incurred by Hydro as a result of the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement.

(4) **Point of Interconnection.** The Limited Partnership shall at the Limited Partnership's sole expense:

- (a) cooperate with Hydro in the interconnection of the Wuskwatim Project to the Integrated Power System, and comply with all provisions of the Interconnection and Operating Agreement;
 - (b) modify the design of the Wuskwatim Project at any time in a manner consistent with Hydro's direction to ensure the interconnection and synchronous operation of the Wuskwatim Project with the Integrated Power System will be safe and reliable and will not adversely affect the Integrated Power System or any other utility's system, or services provided to Hydro's customers; and
 - (c) cause the Net Actual Generation and Commissioning Energy of the Wuskwatim Generating Station to be delivered to Hydro at the Point of Interconnection.
- (5) **Fines and Penalties.** If fees, levies, fines, penalties, or costs or expenses are assessed against Hydro by any Governmental Authority due to non-compliance by the Limited Partnership of any provision of this Agreement or reasonably attributed to by the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement unless same relates to an Event of Hydro Default, the Limited Partnership shall indemnify and hold Hydro harmless against any and all losses, liabilities, damages, and claims suffered or incurred by Hydro, including claims for indemnity or contribution made by third parties against Hydro.
- (6) **Taxes and Fees.** Subject to Section 3.1(8) the Limited Partnership shall be responsible for and pay all present or future federal, provincial, municipal or other lawful taxes (for greater certainty this does not include any income taxes that may be payable by Hydro), duties, levies or fees, which without limiting the generality of the foregoing shall include any value added tax or similar taxes, imposed directly or indirectly, which are applicable to Hydro or the Limited Partnership or the Wuskwatim Project by reason of the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement without any reimbursement in whole or in part from Hydro or Hydro shall, if such amounts have been paid by it, be

entitled to bill the Limited Partnership in accordance with Article VIII and receive payment.

- (7) **Additional Costs.** If the application of any Laws (including any interpretation thereof) causes Hydro to be liable for additional taxes, (for greater certainty this does not include any income taxes that may be payable by Hydro) fees or assessments (“**Additional Costs**”) reasonably attributable to the Parties entering into this Agreement or in respect of the sale by the Limited Partnership and/or the purchase by Hydro of energy and capacity under this Agreement, Hydro may bill the Limited Partnership monthly for such Additional Costs pursuant to Article VIII and receive payment on account of these Additional Costs. These Additional Costs will be calculated so as to place Hydro in the same economic position (considering the timing of the Additional Costs and any expected benefits resulting from said taxes, fees, assessments) in which it would have been if it had not be liable for the Additional Costs.
- (8) **Environmental Credits.** The Limited Partnership shall obtain in its own name any and all environmental credits necessary to operate the Wuskwatim Project in compliance with Laws. Hydro acknowledges that any environmental credits will be assets of or credited to the Limited Partnership as applicable, conditional on the value of such environmental credits having not already been included in the Energy Charge.
- (9) **Dispatch.** The Limited Partnership agrees that the Wuskwatim Generating Station shall at all times be operated and dispatched by Hydro in accordance with the guidelines, procedures, decisions, practices and policies of Hydro’s (or any Affiliate of Hydro) as amended from time to time and Hydro’s Contractual Obligations as amended from time to time and communicated by Hydro to the Limited Partnership and in accordance with the provisions of the System Operations and Dispatch Agreement, the Interconnection and Operating Agreement and the Operations and Maintenance Agreement.
- (10) **Fee.** The Limited Partnership shall pay each month to Hydro a fee equal to three percent (3%) of the Energy Charges to be paid by Hydro for that month in

accordance with the provisions this Agreement plus all present or future Federal, Provincial, Municipal or other lawful taxes, (for greater certainty this does not include any income taxes that may be payable by Hydro) duties, levies or fees, which without limiting the generality of the foregoing should include any value added tax or similar taxes, imposed directly or indirectly on Hydro or the Limited Partnership in respect of the fee. This fee is to compensate Hydro for:

- (a) assuming the risk that the energy purchased pursuant to this Agreement cannot be sold as a Long-Term Transaction;
- (b) not requiring the Limited Partnership pursuant to this Agreement to supply a minimum amount of On-Peak Energy;
- (c) costs of lost opportunities arising from the utilization of Hydro's transmission tie-line capacity as a consequence of Hydro's purchase of energy and capacity pursuant to this Agreement at the Point of Interconnection; and
- (d) assuming the transmission risk in Manitoba associated with Hydro's acceptance of the delivery of all of the energy pursuant to this Agreement at the Point of Interconnection for resale at a different delivery point.

Hydro may bill this fee to the Limited Partnership or set it off against the amount otherwise due to the Limited Partnership pursuant to the provisions of this Agreement.

- (11) **Records.** The Limited Partnership shall prepare and maintain or cause to be prepared and maintained complete and accurate operating and other records as Hydro may from time to time request, acting reasonably. This shall include all records required by any Applicable Reliability Organization to maintain accredited capacity for the Wuskwatim Generating Station. Without limiting the generality of the foregoing the Limited Partnership shall on written notice from Hydro provide or cause to be provided all documents and information necessary to meet the accreditation requirements for the Wuskwatim Generating Station of any Applicable Reliability Organization during the Term. The Limited Partnership acknowledges that Hydro may release such information and documentation to the Applicable Reliability Organization in respect of any

application or maintenance of accredited capacity for the Wuskwatim Generating Station. In addition Hydro shall have access to inspect and test such metering and other recording equipment and operating records as may be required in respect of any accreditation process.

- (12) **Inspection.** The Limited Partnership shall provide Hydro and its representatives with access to the Wuskwatim Project and the records relating to the Wuskwatim Project including all records required to be prepared and maintained in accordance with Section 3.1(12) of this Agreement and Hydro shall be entitled to make and retain copies of all such records. The inspection of the Wuskwatim Project and the review of the records shall not relieve the Limited Partnership of any of its obligations under this Agreement.

3.2 Acknowledgement and Waiver.

The Limited Partnership expressly acknowledges and agrees that the aforesaid covenants are obligations solely of the Limited Partnership and that while Hydro may be a party to other agreements with the Limited Partnership, in respect of certain matters related to the aforesaid covenants, the Limited Partnership shall be bound by and shall be responsible for the performance of the aforesaid covenants in accordance with the provisions of this Agreement and any breach of the aforesaid covenants shall be an Event of Limited Partnership Default in accordance with the provisions of this Agreement. The Limited Partnership waives any right to:

- (a) defend a claim by Hydro that an Event of Limited Partnership Default has occurred under the provisions of this Agreement; or
- (b) to claim Hydro contributed to the breach of any provision of this Agreement; or
- (c) refuse to make any payment that is required to be made pursuant to the provisions of this Agreement or to not comply with any other provision of this Agreement;

due to or as a result of an act or omission in any way associated with the provisions of the Construction Agreement, the System Operations and Dispatch Agreement, the Operations and Maintenance Agreement or the Interconnection and Operating Agreement, and without restricting the generality of the foregoing would include any breach by Hydro of any provision of

those agreements or the supply of services by Hydro or the performance of work by Hydro under the provision of those agreements. The waiver of rights by the Limited Partnership does not extend to any act or omission by Hydro under any of the aforesaid agreements, for which Hydro is found to be liable under those agreements due to Hydro's gross negligence or willful misconduct.

ARTICLE IV METERING

4.1 Determination of Energy Delivered.

The amount of On-Peak Energy, Off-Peak Energy and Commissioning Energy delivered by the Limited Partnership to the Point of Interconnection and received by Hydro during any particular time period in the Hydro Financial Year, shall for the purposes of this Agreement, including Section 2.2, be determined to be equal to:

- (a) the quantum of energy measured by metering equipment at or near the Point of Interconnection, in accordance with Section 4.2 for any particular period of time; reduced by
- (b) the Hydro High Voltage Transmission System Energy Losses applicable for that period of time.

The Hydro High Voltage Transmission System Energy Losses for any particular period in the Hydro Financial Year shall be determined by Hydro and provided to the Limited Partnership within ten (10) Business Days of the last day of the particular period and shall be expressed as a percentage equal to:

- (a) the energy generated and delivered to Hydro's High Voltage Transmission System for that particular period of time during that applicable Hydro Financial Year, from all of the hydraulic and thermal electric generation facilities that form part of the Integrated Power System, (which shall be determined by Hydro measuring the generation and delivery of that energy expressed in GWh); less

- (b) the energy delivered from the Hydro High Voltage Transmission System, during that particular period of time in the Hydro Financial Year, to other parts of the Integrated Power System, (which shall be determined by Hydro measuring that energy at exit points, selected by Hydro, from the Hydro High Voltage Transmission System, expressed in GWh); divided by
- (c) the amount determined in 4.1(c).

4.2 Metering Requirements.

- (1) Subject to Section 4.2(4) Hydro shall provide, install, operate, maintain and own and/or control metering equipment of revenue quality (the “**Hydro Metering Equipment**”), for the Wuskwatim Generating Station at or near the Point of Interconnection the exact location of which shall be determined by Hydro. The Limited Partnership shall reimburse Hydro for all actual costs and expenses incurred by Hydro under this Article IV, including those associated with the operation, maintenance and administration of the Hydro Metering Equipment and the provision of metering data to the Limited Partnership.
- (2) The Hydro Metering Equipment shall be installed, calibrated, repaired, replaced, maintained and tested in accordance with the provisions of the *Electricity and Gas Inspection Act (Canada)* as amended from time to time and any reasonable guidelines, procedures, decisions, practices and policies of Hydro. The Limited Partnership shall provide and maintain without charge, convenient, accessible and safe space at or near the metering point for Hydro Metering Equipment, which shall be in the care of and at the risk of the Limited Partnership. Unless Hydro shall otherwise advise the Limited Partnership, Hydro shall in accordance with any guidelines, procedures, decisions, practices and policies of Hydro read the meters and supply such meter readings to the Limited Partnership no later than the end of the third Business Day of each month. Metering records shall be available at all reasonable times to the Limited Partnership.
- (3) Authorized employees and agents of Hydro shall at reasonable times have free and uninterrupted access to the Wuskwatim Project for the purpose of reading and

conducting tests on the Hydro Metering Equipment. Hydro may test, calibrate, maintain, remove and replace the Hydro Metering Equipment at any time. Hydro shall at the Limited Partnership's expense, inspect and test the Hydro Metering Equipment upon installation and at least once every two (2) years, thereafter. If requested to do so by the Limited Partnership, Hydro shall inspect or test metering equipment more frequently than every two (2) years. Hydro shall give reasonable notice of the time when any inspection or test shall take place, and the Limited Partnership may have representatives present at the test or inspection. Unless provided otherwise by the *Electricity and Gas Inspection Act* (Canada) or other Laws, if Hydro Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at the Limited Partnership's expense, in order to provide accurate metering. If Hydro Metering Equipment fails to register, or if the measurement made by Hydro Metering Equipment during a test varies by more than one percent (1%) from the measurement made by the standard meter used in the test, adjustment shall be made correcting all measurements made by the inaccurate meter for (i) the actual period during which inaccurate measurements were made, if the period can be determined, or if not, (ii) the period immediately preceding the test of the Hydro Metering Equipment equal to one-half the time period from the date of the last test of the Hydro Metering Equipment provided that the period covered by the correction shall not exceed six months.

- (4) Hydro may on notice to the Limited Partnership advise that it shall not install its own metering equipment in accordance with the provisions of Sections 4.2(1), (2) and (3) and shall for the purposes of Section 4.1, have the quantum of energy determined by the metering equipment installed, operated, maintained, owned and/or controlled by Hydro (Transmission and Development Business Unit) pursuant to the provisions of the Interconnection and Operating Agreement. The Parties agree that in the event Hydro provides this notice that the metering data provided to the Limited Partnership pursuant to the provisions of the Interconnection and Operating Agreement shall be used for the purposes of determining the quantum of energy delivered to the Point of Interconnection. The Parties also agree to be bound by the inspection and testing provisions of the Interconnection and Operating Agreement and to any adjustments or corrections

that are made in accordance with the provisions of that agreement to the metering measurements and data and Hydro shall be entitled to receive all metering data and records that the Limited Partnership receives pursuant to the provisions of the Interconnection and Operating Agreement. Hydro shall also be entitled to attend with the Limited Partnership at all testing of the metering equipment under the provisions of the Interconnection and Operating Agreement. The Limited Partnership agrees to cause the metering equipment to be inspected or tested in accordance with the provisions of the Interconnection and Operating Agreement if Hydro so requests. Hydro shall retain its right on reasonable notice to the Limited Partnership to install the Hydro Metering Equipment in accordance with Sections 4.2(1), (2) and (3) at a subsequent date and to have those provisions apply for the determination of the quantum of energy delivered to the Point of Interconnection.

ARTICLE V

ENERGY RATE ADJUSTMENTS

5.1 Report on Long-Term Transactions and Opportunity Transactions.

Hydro shall provide the Limited Partnership within thirty (30) days of the last day of each Hydro Financial Year with a written report of the amount of energy (expressed in GWh) that was bought or sold pursuant to the Long-Term Transactions that were used to calculate the Long-Term Transaction Rate for that Hydro Financial Year and the amount of energy (expressed in GWh) that was bought or sold pursuant to the Opportunity Transactions that were used to calculate the Opportunity Transaction Rate for that Hydro Financial Year. Such report shall also include particulars of the determinations, allocations or adjustments (the “**Adjustments**”) made by Hydro pursuant to Sections 2.2(1)(c), (d), and (e) and 2.2(3)(c), (d) and (e) respectively.

5.2 Insufficient Transaction in Respect of Long-Term Transaction Rate.

If the report prepared by Hydro pursuant to Section 5.1 in respect of a particular Hydro Financial Year discloses there were Insufficient Transactions in respect of the Long-Term Transaction Rate for that Hydro Financial Year, then, subject to an Energy Rate Review brought pursuant to Article XVII of the PDA the compensation to be paid by Hydro for the On-Peak Energy received by Hydro at the Point of Interconnection on a Canadian Dollar per MWh basis

during that Hydro Financial Year (the “**Insufficient Long-Term Transaction Year**”) shall be based on a rate that is equal to the actual weighted average price over the Insufficient Long-Term Transaction Year that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid, for the energy and capacity purchased or sold by Hydro pursuant to all applicable On-Peak Opportunity Transactions during the Insufficient Long-Term Transaction Year (the “**On-Peak Opportunity Transaction Rate**”) determined in the following manner:

- (a) only those On-Peak Opportunity Transactions or portions thereof applicable to the time period where the energy sold or purchased physically crossed the Manitoba border and were delivered during the Insufficient Long-Term Transaction Year, as determined by Hydro in accordance with Good Utility Practice, (the “**Applicable On-Peak Opportunity Transactions**”) shall be included in determining the actual weighted average price over the Insufficient Long-Term Transaction Year;
- (b) Hydro, acting reasonably, in addition to all other allocations or adjustments that may be required, shall include the portion of the price, if any, that is payable for capacity, which is attributable to that portion of the energy that physically crossed the Manitoba border and was delivered during the Insufficient Long-Term Transaction Year for each of the Applicable On-Peak Opportunity Transactions in determining the actual average weighted price over the Insufficient Long-Term Transaction Year;
- (c) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable On-Peak Opportunity Transactions shall be adjusted to reflect the price at the Manitoba border, net of all charges or credits applicable to or allocated by Hydro, acting reasonably to the Applicable On-Peak Opportunity Transactions. The charges or credits will include actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but shall not include Hydro’s administrative and general overhead costs and expenses or any costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement;

- (d) the actual price that Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid pursuant to the Applicable On-Peak Opportunity Transactions shall be determined in Canadian Dollars per MWh and if Hydro, as purchaser is obligated to pay or Hydro, as seller is entitled to be paid in U.S. Dollars pursuant to any of the Applicable On-Peak Opportunity Transactions, the amounts shall be converted to Canadian Dollars (after the adjustments referred to in this Section 5.2) by reference to the Equivalent Canadian Dollar Amount on the last Business Day of the month, during which the said obligation to pay, or the entitlement to be paid the said amount arises; and
- (e) the On-Peak Opportunity Transaction Rate shall be expressed in Canadian dollars per MWh and shall be calculated by dividing (i) the total net amount that Hydro, as purchaser, is obligated to pay or Hydro, as seller, is entitled to be paid, pursuant to the Applicable On-Peak Opportunity Transactions, determined in accordance with this Section 5.2; by (ii) the total energy that was imported or exported by Hydro pursuant to the Applicable On-Peak Opportunity Transactions, determined in accordance with this Section 5.2.

If as a result of an Energy Rate Review brought pursuant to Article XVII of the PDA the compensation to be paid by Hydro for the On-Peak Energy received by Hydro during the Insufficient Long-Term Transaction Year is greater than or less than the compensation determined in accordance with this Section 5.2, then Hydro shall prepare a reconciliation of the amount owing to the Limited Partnership by Hydro or that Hydro has overpaid. The reconciliation shall adjust for all amounts that the Limited Partnership is required to pay to Hydro, that is based on or is otherwise determined from the Energy Charge paid by Hydro to the Limited Partnership for the delivery of the Net Actual Generation, including the fee to be paid pursuant to Section 3.1(11). On completion of the reconciliation any amount overpaid by Hydro, shall immediately be paid by the Limited Partnership to Hydro, without interest, unless Hydro agrees in writing to receive same as a credit on account of any amount otherwise required to be paid pursuant to the provisions of this Agreement and any additional amount owing by Hydro shall immediately be paid by Hydro to the Limited Partnership without interest.

5.3 Insufficient Transactions in Respect of the Opportunity Transaction Rate.

If the report prepared by Hydro pursuant to Section 5.1 in respect of a particular Hydro Financial Year discloses there were Insufficient Transactions in respect of the Opportunity Transaction Rate for that Hydro Financial Year, then, the compensation to be paid by Hydro for the Off-Peak Energy received by Hydro during that Hydro Financial Year and for all subsequent years shall, subject to any future Energy Rate Review, be determined pursuant to the Energy Rate Review, brought pursuant to Article XVII of the PDA.

5.4 Adjustment of Energy Rate.

The Energy Rate payable under this Agreement shall be adjusted to accord with the agreement of the Parties or the decision of an Expert made pursuant to an Energy Rate Review and Transaction Rate Review. Forthwith after any agreement or decision which has retroactive effect, Hydro shall prepare a reconciliation of the amount that is owing to the Limited Partnership by Hydro or the amount that Hydro has overpaid. The reconciliation shall adjust for all amounts that the Limited partnership is required to pay to Hydro, that is based on or is otherwise determined from the Energy Charge paid by Hydro to the Limited Partnership for the delivery of the Net Actual Generation, including the fee required to be paid pursuant to Section 3.1(11). On completion of the reconciliation any amount overpaid by Hydro, shall immediately be paid by the Limited Partnership to Hydro, without interest, unless Hydro agrees in writing to receive same as a credit on account of any amount otherwise required to be paid to the Limited Partnership pursuant to the provisions of this Agreement and any additional amount owing by Hydro shall immediately be paid by Hydro to the Limited Partnership without interest.

ARTICLE VI

ENERGY RATE REVIEWS AND TRANSACTION RATE REVIEWS

6.1 Energy Rate Review.

The Long-Term Transaction Rate and the Opportunity Transaction Rate used to determine the Energy Rate have been agreed to as a proxy or reasonable substitute to capture the enhanced value of the energy and capacity to Hydro in the electricity markets available to Hydro outside of Manitoba and the recovery of associated costs related to the purchase of the energy

and capacity from the Limited Partnership and the resale in the electricity markets available to Hydro outside of Manitoba. The Energy Rate has been arrived at based on industry practices existing as at the date of this Agreement for the pricing of different types of transactions for different classes or categories of energy. Industry practices may change during the Term, possibly significantly. For this reason, the Pricing Principle and Pricing Criteria described in Sections 6.2 and 6.3 have been established to govern any Energy Rate Review. Subject to Sections 6.2 and 6.3, the Energy Rate may be reviewed from time to time in the manner provided in Article XVII of the PDA.

6.2 Pricing Principle.

The pricing principle set forth below (the “**Pricing Principle**”) shall govern any Energy Rate Review:

- (a) the rate Hydro is to pay for the capacity, of and the energy generated by, the Wuskwatim Project will be based on the value of the energy and capacity to Hydro at the Manitoba border in the electricity markets available to Hydro outside of Manitoba.

6.3 Pricing Criteria.

In the application of the Pricing Principle, during an Energy Rate Review the following pricing criteria (the “**Pricing Criteria**”) shall be applied:

- (a) the rate will recognize: (i) the effects of the applicable constraints and regulations that may limit access to the electricity markets outside of Manitoba; and (ii) any other risks or actual costs to Hydro, associated with or applicable to the purchase of the energy and capacity of the Wuskwatim Project from the Limited Partnership and the resale of that energy and capacity in the electricity markets outside of Manitoba (to the extent Hydro has not been compensated for these risks or costs pursuant to other provisions of this Agreement);
- (b) in determining the value of the energy and capacity of the Wuskwatim Project the rate will recognize that the Wuskwatim Project is operated by Hydro as part of the Integrated Power System and although Hydro accepts the energy from the

Wuskwatim Project as it is produced on an hourly basis, Hydro through its operation of the Integrated Power System is able to allocate portions of the energy into other time periods;

- (c) if Hydro is exporting or importing energy to or from electricity markets outside of Manitoba in reasonable quantities (the determination of which is not restricted by the quantum referenced for Insufficient Transactions), the price that Hydro obtained at the Manitoba border for the export or import of the energy that physically crossed the Manitoba border pursuant to the export or import transactions (net of all charges or credits associated with or applicable to those transactions including actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but not including Hydro's administrative and general overhead costs and expenses or any costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement) will be used when determining the value of the energy and capacity of the Wuskwatim Project to Hydro; and
- (d) if Hydro is not exporting or importing energy and capacity in reasonable quantities (the determination of which is not restricted by the quantum referenced for Insufficient Transactions), then, subject to Section 6.3(a)(ii), the determination of value to Hydro will be made based on the price that Hydro could have obtained at the Manitoba border if it was exporting energy and capacity to electricity markets available to Hydro outside of Manitoba (net of all charges or credits associated with or applicable to those transactions including actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions but not including Hydro's administrative and general overhead costs and expenses or any other costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this Agreement).

6.4 Transaction Rate Review.

The Adjustments made by Hydro pursuant to Sections 2.2(1)(c), (d) and (e) and 2.2(3)(c), (d) and (e), as the case maybe, may be reviewed in the manner provided in Article XVII of the PDA.

**ARTICLE VII
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of the Limited Partnership.

The Limited Partnership hereby represents and warrants that each of the following representations and warranties is true and correct:

- (a) the Limited Partnership is a limited partnership duly formed, validly existing and in good standing under the laws of the Province of Manitoba and has all requisite power and authority to own, operate or lease the properties owned or to be owned, operated or leased by the Limited Partnership and to carry on its business as contemplated by the Limited Partnership Agreement; and
- (b) this Agreement has been duly authorized, executed and delivered by the General Partner by or on behalf of the Limited Partnership and is a legal, valid and binding obligation of the Limited Partnership and of the General Partner enforceable against each of them by Hydro in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction or by this Agreement, at the discretion of the Arbitrator.

7.2 Survival of Representations and Warranties of the Limited Partnership.

All the representations and warranties of the Limited Partnership contained in Section 7.1 shall survive the execution and delivery of this Agreement and shall continue in full force and effect notwithstanding any investigation made at any time by or on behalf of Hydro.

7.3 No Representations by the Limited Partnership.

No other representation, warranty or other statement made by the Limited Partnership in respect of this Agreement shall be binding on the Limited Partnership unless made by it in writing as a specific amendment to this Agreement.

7.4 Representations and Warranties of Hydro.

Hydro hereby represents and warrants that each of the following representations and warranties is true and correct:

- (a) Hydro is a corporation duly incorporated and organized and validly subsisting under the laws of the Manitoba and has the corporate power and authority to own or lease its property and to enter into this Agreement and to perform its obligations hereunder, subject to the provisions of the *Hydro Act*; and
- (b) this Agreement has been duly authorized, executed and delivered by Hydro and is a legal, valid and binding obligation of Hydro enforceable against Hydro by the Limited Partnership in accordance with its terms, except as enforcement may be limited by the provisions of the *Hydro Act* and by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction or, by this Agreement, at the discretion of the Arbitrator.

7.5 Survival Representations and Warranties of Hydro.

All the representations and warranties of Hydro contained in Section 7.4 shall survive the execution of this Agreement and shall remain in full force and effect notwithstanding any investigation made at any time by or on behalf of the Limited Partnership.

7.6 No Representations by Hydro.

No other representation, warranty or other statement made by Hydro in respect of this Agreement shall be binding on Hydro unless made by it in writing as a specific amendment to this Agreement.

ARTICLE VIII
BILLING, PAYMENTS AND ADJUSTMENTS

8.1 Billing, Payments and Adjustments.

- (1) All billings shall be calculated monthly at the end of each calendar month and reconciled monthly and yearly in accordance with provisions of this Agreement.
- (2) All bills shall be delivered monthly by the Limited Partnership to Hydro. Bills shall be delivered within twenty-one (21) calendar days after the end of the period covered by such bill. The period for billing shall be from 12:01 a.m. (Winnipeg time) of the first calendar day of the month to 12:01 a.m. (Winnipeg time) of the first calendar day of the succeeding month. Bills shall be deemed rendered upon receipt by Hydro. If all information necessary is not accurately known in time for the preparation of the monthly bill, estimates may be used to prepare an interim bill with a final bill to be prepared when accurate information becomes known.
- (3) All bills shall be due and payable in immediately available same-day funds within five (5) Business Days from the date the bill is rendered. If such due date falls on a non Business Day, the payment shall be due and payable on the next following Business Day. Payments received after the due date shall be considered late. Late payments shall include a fee equal to the amount determined by applying interest at the prime rate established by the Limited Partnership's bank plus two percent (2%) per annum to the overdue amount billed for the period the payment is late.
- (4) If a Party disputes all or any part of a bill, that Party shall pay the amount of the bill not in dispute to the other Party and shall pay into an account specified by Hydro that portion of the bill in dispute, pending resolution of such dispute. If the resolution of a dispute regarding a bill results in a refund, interest thereon shall accrue at whatever rate of interest is applicable to the account into which the disputed amount has been deposited.
- (5) Payment of all bills shall be made by interbank wire transfer to the Limited Partnership bank in accordance with the account instructions as provided by the

Limited Partnership and payment shall be deemed made when received by the designated bank.

- (6) Hydro shall bill the Limited Partnership for all actual costs and expenses which it incurs in connection with this Agreement. The Limited Partnership's payment to Hydro under this paragraph shall be made within five (5) Business days following receipt of the written bill from Hydro. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate of the Limited Partnership's bank's prime interest rate plus two percent (2%) per annum.
- (7) Hydro shall have the right to set-off and/or recoup against payments to be made to the Limited Partnership by the terms of this Agreement any amount reasonably believed by Hydro to be due to Hydro from the Limited Partnership under Section 3.1(11). Hydro's exercise of its right of retention under this section is without prejudice to the Limited Partnership's right to contest the set-off and the claim upon which the set-off is based. Where Hydro exercises its right of set-off or recoupment, Hydro shall notify the Limited Partnership in writing of the specific basis for the set-off or recoupment in reasonable detail, including the basis for calculation of the amount believed to be due to Hydro.

ARTICLE IX EVENTS OF DEFAULT

9.1 Event of Limited Partnership Default

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

- (1) any representation or warranty or certification made or deemed to be made by the Limited Partnership pursuant to or in connection with this Agreement delivered to Hydro shall prove to have been incorrect in any material respect when made or deemed to have been made;

- (2) an Arbitrator makes a determination that the Limited Partnership failed to perform or observe any term, covenant or agreement contained in this Agreement, on its part to be performed or observed and such failure shall remain unremedied after the end of the period within which the Arbitrator determines the Limited Partnership is required to remedy such failure;
- (3) the Limited Partnership shall:
 - (a) become insolvent or generally not pay its debts as such debts become due;
 - (b) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors;
 - (c) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
 - (d) institute or have instituted against it any proceeding seeking:
 - (i) to adjudicate it a bankrupt or insolvent;
 - (ii) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
 - (iii) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of the Limited Partnership's Property;
 - (iv) and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within 30 days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of the Limited Partnership's Property) shall occur; or

- (v) take any action to authorize any of the foregoing actions;
- (4) Notice is sent to or received by the Limited Partnership from any creditor with respect to the intention of such creditor to enforce a lien on any Property of the Limited Partnership unless such Notice is being contested in good faith by appropriate legal proceedings and such Notice has not resulted in, or does not involve, any immediate danger of the sale, forfeiture or loss of any of the Property of the Limited Partnership that is the subject of such Notice;
- (5) any one or more judgments or orders in excess of \$75,000 (or the equivalent in another currency) in the aggregate, or any one or more orders, directives, letters of credit or other communications from any Governmental Authority which may be reasonably likely to require the Limited Partnership to expend an amount in excess of \$75,000 (or the equivalent amount in another currency) in the aggregate shall be rendered against the Limited Partnership, and either:
 - (a) enforcement proceedings shall have been commenced by any creditor upon any such judgment(s) or order(s); or
 - (b) there shall be any period of ten (10) consecutive Business Days during which a stay of enforcement of any such judgment or order, directive, letter or other communication by reason of a pending appeal or otherwise, shall not be in effect;
- (6) the loss, suspension or failure to renew any Licence or any other licence or permit held by the Limited Partnership or any agreement to which the Limited Partnership is a party the effect of which would prohibit or otherwise restrict the Limited Partnership from conducting all or a material part of the Business; or
- (7) the occurrence of a Material Adverse Business Effect;

then, and in any such event, Hydro shall by written notice to the Limited Partnership be entitled to terminate the obligations of Hydro under this Agreement.

9.2 Expense of Hydro

Upon the occurrence of any Event of Limited Partnership Default, which has not been waived and is continuing, Hydro may take any action Hydro considers advisable, acting reasonably, to remedy the effect of such Event of Limited Partnership Default. All reasonable expenses and costs, charges incurred by or on behalf of Hydro in connection with any remedial action taken pursuant to this Section 9.2 shall be a cost to be paid to Hydro by the Limited Partnership in accordance with provisions of this Agreement.

9.3 Event of Hydro Default

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

- (1) an Arbitrator makes a determination that Hydro failed to perform or observe any term, covenant or agreement contained in this Agreement on its part to be performed or observed and such failure shall remain unremedied after the end of the period within which the Arbitrator determines Hydro is required to remedy such failure; or
- (2) Hydro shall:
 - (a) become insolvent or generally not pay its debts as such debts become due;
 - (b) admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors;
 - (c) file a notice of intention to file a proposal under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors;
 - (d) institute or have instituted against it any proceeding seeking:
 - (i) to adjudicate it a bankrupt or insolvent;
 - (ii) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency or reorganization or relief of debtors; or

- (iii) the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, assignee, liquidator, sequestrator, trustee or other similar official for it or for any substantial part of its Property;
- (iv) and in the case of any such proceeding instituted against it (but not instituted by it), it shall not be dismissed or stayed within 30 days of its commencement or issuance or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property) shall occur; or
- (v) take any corporate action to authorize any of the foregoing actions;

then, in any such event, the Limited Partnership shall by written notice to Hydro be entitled to terminate the obligations of the Limited Partnership under this Agreement.

9.4 Expense of the Limited Partnership

Upon the occurrence of any Event of Hydro Default, which has not been waived and is continuing, the Limited Partnership may take any action the Limited Partnership considers advisable, acting reasonably, to remedy the effect of such Event of Hydro Default. All reasonable expenses and costs, charges incurred by or on behalf of the Limited Partnership in connection with any remedial action taken pursuant to this Section 9.4 shall be a cost to be paid to the Limited Partnership by Hydro in accordance with provisions of this Agreement.

9.5 Remedies Cumulative

The remedies provided for in this Agreement are cumulative and do not exclude any other right or remedy provided by Law.

ARTICLE X
DISPUTE RESOLUTION

10.1 General.

Subject to Section 10.2, all disputes differences or claims, or apprehended disputes or claims which arise under this Agreement relating to the application, interpretation, meaning, alleged violation, performance or non-performance of this Agreement shall be settled by final and binding arbitration conducted pursuant to the provisions of this Article X.

10.2 Limitation.

The provisions of this Article X do not apply to an Energy Rate Review or Transaction Rate Review, which reviews shall be conducted pursuant to the provisions of Article XVII of the PDA. Notwithstanding the provisions of this Article X an Arbitrator appointed pursuant to this Article X shall have no jurisdiction to consider or review any matters referred to or referable to an Expert under Article XVII of the PDA, except with respect to the enforcement of a decision of such Expert made in accordance with the provisions of Article XVII of the PDA.

10.3 Endeavour to Resolve.

The Parties agree that prior to bringing any dispute, difference or claim to arbitration pursuant to the provisions of this Article X, they shall use reasonable efforts to resolve such dispute, difference or claim amongst themselves.

10.4 Arbitration.

A Party (an “**Applicant**”) who wants to settle a dispute, difference or claim or apprehended dispute, difference or claim referred to in Section 10.1 (a “**Dispute**”) shall provide the other Party a written notice (a “**Dispute Notice**”) which shall contain the following:

- (a) the name of the respondent;
- (b) a detailed description of the Dispute; and
- (c) the relief, remedy, redress or declaratory order sought.

A Dispute Notice shall be delivered within 180 days from when the Applicant knew or reasonably ought to have known of the existence of a Dispute, subject to the written agreement of the Parties to extend this time limit. An Applicant who fails to deliver a Dispute Notice with respect to a Dispute within the prescribed period shall be deemed to have waived and abandoned the Dispute.

10.5 Reply.

The Party who receives a Dispute Notice (a “**Respondent**”) shall, within 60 days of receiving the Dispute Notice, provide the Applicant with a written reply (a “**Reply**”), which sets out in detail the Respondent’s position with respect to the Dispute.

10.6 Referral to Arbitration.

Within 30 days of the Applicant’s receipt of the Reply, if the Dispute has not been settled, the Dispute shall be referred to binding arbitration pursuant to the provisions of *The Arbitration Act* (Manitoba) and the following sections of this Article X, provided that if there is any inconsistency between the provisions of the said Act and the said sections, the provisions of the said sections shall prevail.

10.7 Appointment of Arbitrator.

Subject to Section 10.8, an Arbitrator shall be appointed to adjudicate the dispute, using the following procedure:

- (1) the Applicant shall provide to the Respondent and the Respondent shall provide to the Applicant the names, addresses and occupations of not more than three individuals, each of whom it would accept as an Arbitrator;
- (2) if any one of the persons on the list of proposed arbitrators is acceptable to the Applicant and the Respondent and is willing and able to act as the Arbitrator, then that person shall be appointed as the Arbitrator forthwith; and
- (3) if within 45 days of the referral of the Dispute to the binding arbitration the Applicant and the Respondent cannot agree upon a person to act as Arbitrator, either of them may request that the Arbitrator be appointed by the Chief Justice or

the Associate Chief Justice of the Court of Queen's Bench (Winnipeg Division) by application to the said court served on the other Party to the arbitration.

10.8 Qualifications of Arbitrator.

An Arbitrator appointed pursuant to Section 10.7 shall:

- (a) be qualified to decide the particular question in dispute;
- (b) not have a pecuniary interest in the particular matter in dispute; and
- (c) not have, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to Section 10.4, acted, or been a member of any firm that has acted as solicitor, counsel or agent for any of the Parties.

10.9 Length of Hearing.

The Arbitrator once appointed shall proceed expeditiously to hear and determine the question or questions in dispute as set out in the Dispute and Reply, subject to any reasonable delay due to, or resulting from, any unforeseen circumstances.

10.10 Place of Hearing.

The arbitration shall take place at such location, place and time as the Parties may agree or as the Arbitrator shall fix. The law applicable to the arbitration shall be the Laws of Manitoba and the Laws of Canada applicable in Manitoba.

10.11 Powers of the Arbitrator.

The Arbitrator may determine all questions of law, fact and jurisdiction and all matters of procedure relating to the arbitration. The Arbitrator shall have the right to grant all legal and equitable relief necessary to provide a final and conclusive resolution of the Dispute including, without limitation, the right to relieve, on just and equitable terms, if applicable, against breaches of time limits set out in this Agreement, the right to determine, if applicable, the monetary value of any loss or injury suffered by a Party and to make an order directing a Party to pay the monetary value of any loss or injury so determined and to award costs (including legal fees and the costs of the arbitration) and interest. Except as the Parties otherwise expressly

agree, the Arbitrator shall not have the authority or jurisdiction to change, alter, or amend this Agreement or any term or provision contained therein.

10.12 Counsel.

The Parties may be represented by counsel.

10.13 Evidence.

Evidence submitted in arbitration may be presented in writing or orally. The Parties at a minimum shall disclose all relevant information and documents as would be compellable in a court of law. The Arbitrator may require relevant information and documents to be disclosed by either Party, either prior to or during a hearing, except such documents as would not be compellable if the action were brought in a court of law.

10.14 Arbitration Award.

The Arbitrator shall deliver the award within 90 days following the completion of the hearing.

10.15 Award Final.

The decision of the Arbitrator shall be final and binding on the Parties. The right of any affected Party to appeal an award will be limited to a question of law, provided that leave is first obtained from the Court of Queen's Bench based on the criteria listed in Section 44 of *The Arbitration Act* (Manitoba).

10.16 Costs of Arbitration.

Each Party shall bear its own costs and an equal share of the costs of the Arbitrator, subject to a different award as to costs by the Arbitrator made following the completion of the Arbitration.

10.17 Performance of Obligations.

Each Party agrees to continue performing its obligations under this Agreement while any Dispute is being resolved or arbitrated, subject to any interim order to the contrary issued by the Arbitrator.

10.18 Confidentiality.

All hearings before the Arbitrator shall be closed to the public. All statements and evidence submitted for the arbitration, the decision of the Arbitrator, the fact of the arbitration itself and all other aspects regarding the arbitration shall be kept strictly confidential except as otherwise required by applicable Law or agreed to by the Parties.

10.19 Arbitrator's Undertaking.

Upon appointment, every Arbitrator shall swear or affirm an undertaking in the form set forth in Schedule A.

10.20 Vacancy.

Where a vacancy occurs in the office of the Arbitrator after the commencement of proceedings, the proceedings need not recommence but may, with the unanimous consent of the Parties continue before a replacement Arbitrator. In the absence of such unanimous consent, the arbitration must recommence as if it were a new matter before a new Arbitrator.

10.21 Days.

The word "days" wherever used in this Article X shall mean calendar days.

**ARTICLE XI
GENERAL PROVISIONS**

11.1 Notices.

All Notices provided for in this Agreement shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable addresses or facsimile numbers, as the case may be, set opposite the party's name in Schedule B hereto or at or to such other address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the

recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

11.2 Indemnification.

The Limited Partnership agrees to indemnify and save harmless Hydro and its officers, directors, representatives and employees and agents from any and all claims, demands, proceedings, law suits, damages, liabilities, deficiencies, costs and expenses (including, without limitation all legal fees on a solicitor and client basis) and other professional fees and disbursements, interests, penalties and amounts paid in settlement suffered or incurred by Hydro as a result of or arising directly or indirectly out of or in contravention of any breach by the Limited Partnership of or in any inaccuracy of any representation or warranty of the Limited Partnership contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto and any breach or non-performance by the Limited Partnership of any covenant to be performed by or pursuant to this Agreement or in any agreement, certificate or other document delivered pursuant hereto.

11.3 Further Assurances.

Each Party hereto, without further consideration, shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement or more effectively completing any matter provided for in this Agreement and shall take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

11.4 Time of the Essence.

Time shall be of the essence of this Agreement.

11.5 Enurement.

This Agreement shall enure to the benefit of and be binding upon the Parties and their permitted assigns.

11.6 Counterparts.

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

11.7 Waivers and Amendments.

Any term, covenant or condition of this Agreement may be amended only with the consent of the Parties.


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

**WUSKWATIM POWER LIMITED
PARTNERSHIP, by its General Partner
5022649 Manitoba Ltd.**

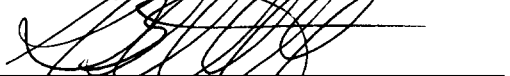
Per: 

Name: Ken R. F. Adams
Title: Chairman

**THE MANITOBA HYDRO-ELECTRIC
BOARD**

Per: 

Name: Robert B. Brennan
Title: President and Chief Executive
Officer

Per: 

Name: Robert D. Bettner
Title: Assistant Corporate Secretary

SCHEDULE A

ARBITRATOR'S UNDERTAKING

FORM OF OATH OR UNDERTAKING OF THE ARBITRATOR

I, _____, do swear and affirm that I will hear the matters referred to me as provided for by the Power Purchase Agreement and The Arbitration Act (Manitoba) in the matter of:

(State particulars of the matter)

and make a true and impartial award, according to the evidence, arguments of the parties, using my skill and knowledge.

DATED this _____ day of _____, 20__.

Sworn or Affirmed before

A Commission, Notary, etc.

at _____

this ___ day of _____, 20__.

SCHEDULE B

NOTICES

Wuskwatim Power Limited Partnership
c/o 5022649 Manitoba Ltd.
Attention: Chairman
3rd Floor, 820 Taylor Avenue
Winnipeg, MB
R3C 2P4

Fax: (204) 474-4947

Manitoba Hydro
Attention: General Counsel
3rd Floor, 820 Taylor Avenue
Winnipeg, MB
R3C 2P4

Fax: (204) 474-4947