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**OPERATIONS AND MAINTENANCE  
AGREEMENT**

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**between**

**WUSKWATIM POWER LIMITED PARTNERSHIP**

**– and –**

**THE MANITOBA HYDRO-ELECTRIC BOARD**

**DATED June 28, 2006**

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**OPERATIONS AND MAINTENANCE AGREEMENT**

**DATED** the 28<sup>th</sup> 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, 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 Power Purchase Agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project, and Hydro, the Limited Partnership will sell to Hydro and Hydro will purchase from the Limited Partnership all of the capacity of and the energy generated by the Wuskwatim Generating Station;

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 has agreed to grant to Hydro the right and authority to provide, and Hydro has agreed to provide, the services necessary to operate and maintain the Wuskwatim Project, subject to the terms and conditions 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 5.1(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.

“**Agreement**” means this Operations and Maintenance 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 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.

**“Budgetary Period”** means:

for the first operations and maintenance budget, the period commencing on First Completion and ending on the following March or such other time period as Hydro may designate; and

for each successive operations and maintenance budget, April through March, or such other time periods as Hydro may designate.

**“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.

**“CRD”** means the diversion of water from the Churchill River to the Nelson River and the impoundment of water on the Rat River and Southern Indian Lake as authorized by the CRD Licence.

**“CRD Licence”** means the interim or final licence and associated approvals to operate the CRD granted from time to time by Manitoba to Hydro under *The Water Power Act* (Manitoba).

**“Capital Improvements”** means the Wuskwatim Project design changes or additions which are intended to improve the performance or production of the Wuskwatim Project or which represent very significant replacement or refurbishment of the Wuskwatim Project.

**“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.

“**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 plan, design, engineer, construct and commission the Wuskwatim Project, as amended from time to time.

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

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

“**Consumables**” means, collectively, the water treatment chemicals, lubricants, hand tools, and other consumable items required for the operation of the Wuskwatim Project.

“**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.

“**Costs Calculation Criteria**” shall have the meaning specified in Section 4.3(3).

“**Daily Log**” means the log prepared by Hydro, in which Hydro records the general operating condition of the Wuskwatim Project, which will be in such form as required by applicable Laws, and shall include such information as Hydro deems appropriate to include from time to time and may include:

- (i) periodic recording of electrical metering;
- (ii) start/stop times of major equipment that could or does effect the Wuskwatim Generating Station availability or reliability, and the reasons therefore;
- (iii) weather conditions that could affect the Wuskwatim Generating Station production;
- (iv) records of shift changes including names of Hydro's key personnel on the site of the Wuskwatim Project;
- (v) special events on the site of the Wuskwatim Project including regulatory agency visits and inspections by outside personnel;
- (vi) ongoing major maintenance that may affect the Wuskwatim Generating Station's availability or reliability;
- (vii) potential Force Majeure events; and
- (viii) record of communications with the system dispatch and the transmission authority.

**"Dispute"** shall have the meaning specified in Section 10.4.

**"Dispute Notice"** shall have the meaning specified in Section 10.4

**"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"** shall have the meaning ascribed thereto in the PDA.

**"Final Closing"** shall have the meaning ascribed thereto in the PDA.

**"Final Closing Date"** shall have the meaning ascribed thereto in the PDA.



**“First Completion Date”** shall have the meaning ascribed thereto in the PDA.

**“Force Majeure”** shall have the meaning specified in Section 11.1.

**“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.

**“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.

**“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 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 the Power Purchase Agreement.

**“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 9<sup>th</sup> day of December, 2004.

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

**“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.

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

**“Operating Plan”** means the plan, prepared by Hydro, relating to the performance of the Operations and Maintenance Services for each year during the Term.

**“Operations and Maintenance Costs”** shall have the meaning specified in Section 4.3(1).

**“Operations and Maintenance Services”** shall have the meaning specified in Section 4.1(1).

**“PDA”** means the Project Development Agreement dated June 26, 2006 made between Nisichawayasihk Cree Nation, Hydro, Taskinigaahp 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.

“**Power Purchase Agreement**” means an agreement dated even date herewith between the Limited Partnership, as owner of the Wuskwatim Project and Hydro, whereby the Limited Partnership will sell to Hydro and Hydro will purchase from the Limited Partnership the capacity of and the energy generated by the Wuskwatim Generating Station, as amended or replaced from time to time.

“**Property**” means, with respect to any Person, any interest of such Person in any land or property or asset of every kind, wherever situated, 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.

“**Spare Parts**” means non-installed equipment in inventory at the First Completion Date, which level of inventory shall be maintained by Hydro on the Wuskwatim Project site for the purpose of replacing installed equipment that may fail, deteriorate to unacceptable levels of performance, or give indication of imminent failure. Spare Parts shall not include Consumables and tools supplied by Hydro for its own use.

“**Service Parameters**” shall have the meaning specified in Section 4.2(1).

“**Status Reports**” means those reports prepared and delivered by Hydro to the Limited Partnership.

“**Subcontractor**” means the Hydro contractors’ providing equipment, labour, or any portion of the Operations and Maintenance Services either by direct agreement with Hydro or through an agreement with a Subcontractor.

“**Subcontracts**” means any agreement between Hydro and a Subcontractor or between Subcontractors, to provide equipment, labour or any portion of the Operations and Maintenance Services.

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

“**Term**” means the initial term of this Agreement as specified in Section 3.1(1) plus any renewal of the Term determined pursuant to Section 3.1(2).

“**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 or thereof;
- (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 Hydro 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 – Scope of Work

Schedule B – Arbitrator’s Undertaking

Schedule C – 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**  
**RELATIONSHIP OF THE LIMITED PARTNERSHIP, HYDRO AND**  
**SUBCONTRACTORS**

**2.1 Status of the Operator.**

Hydro shall perform the services set forth in this Agreement as an independent contractor to the Limited Partnership and shall not be an agent or employee of the Limited Partnership. Without limiting the generality of the foregoing, the Limited Partnership shall have no right to hire, fire, discipline or promote Hydro employees or otherwise affect the terms and conditions of employment of such employees.

**2.2 Subcontracts and Subcontractors.**

Hydro shall have the right to have any or all of the Operations and Maintenance Services performed by Subcontractors selected by Hydro. Subject to the provisions of this Agreement and in particular Section 6.1, notwithstanding any such Subcontract, Hydro shall remain liable to satisfy all terms and conditions of this Agreement and shall be solely responsible for the management of the Subcontractors and for the acts and omissions of the Subcontractors and all Persons either directly or indirectly employed by them.

**ARTICLE III**  
**TERM**

**3.1 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 3.1(2) or terminated pursuant to the provisions of this Agreement.
- (2) This Agreement will automatically be extended at the end of the initial Term or subsequent extension as the case may be for periods of twenty-five (25) years each, unless either Party provides written notice to the other Party three hundred and sixty-five (365) days prior to the end of the initial Term or subsequent



extension, as the case may be, that the initial Term or subsequent extension, as the case may be, is not to be extended or further extended. If the initial Term is extended, in addition to the other rights granted pursuant to the provisions of this Agreement to terminate this Agreement, Hydro may terminate this Agreement at any time during the initial extension or any subsequent extensions by providing two (2) years written notice to the Limited Partnership on the condition that Hydro is forwarding the termination notice in conjunction with its intention to terminate the provision of operations and maintenance services to other generating stations that are part of the Integrated Power System.

- (3) On the expiry of the Term or upon the termination of this Agreement Hydro shall have no further obligation under the terms of this Agreement to the Limited Partnership and the Limited Partnership shall be required to make alternate arrangements for the operation and maintenance of the Wuskwatim Project.

#### **ARTICLE IV**

#### **OPERATIONS AND MAINTENANCE SERVICES**

##### **4.1 Operations and Maintenance Services.**

- (1) Subject to the provisions of this Agreement, the Limited Partnership grants to Hydro the right and authority to provide, and Hydro agrees to provide all services necessary to operate and maintain the Wuskwatim Project throughout the Term in accordance with such guidelines, procedures, decisions, practices and policies, as may be made or established and as may be amended by Hydro, from time to time, as Hydro, in its sole discretion deems appropriate, without limitation (the “**Operations and Maintenance Services**”). The anticipated scope of work related to the Operations and Maintenance Services is contained in Schedule A. Subject to the provisions of this Agreement, the scope of work is subject to Hydro’s right and authority to make such revisions to the scope of work, from time to time, as Hydro in its sole discretion deems appropriate, without limitation.

- (2) Hydro shall subject to the provisions of this Agreement perform all services and provide all labour, tools, equipment (including materials and machinery), facilities, and any and all other things necessary for Hydro's performance of the Operations and Maintenance Services. The Wuskwatim Project shall be operated and maintained to achieve the performance defined in the Operating Plan, consistent with:
- (a) the Operations and Maintenance Services;
  - (b) all applicable Laws; and
  - (c) Good Utility Practice.
- (3) Hydro shall provide the Operations and Maintenance Services commencing on the First Completion Date. Operations and Maintenance Services will initially only be performed on the first turbine of the Wuskwatim Generating Station that is fully commissioned and comes into service as evidenced by a commissioning certificate issued in respect of that unit by Hydro's commissioning engineer. Operations and Maintenance Services will be performed on the second turbine of the Wuskwatim Generating Station commencing on the date it is fully commissioned and comes into service as evidenced by a commissioning certificate issued in respect of that unit by Hydro's commissioning engineer. On the Construction Completion Date Hydro shall provide Operations and Maintenance Services for all of the Wuskwatim Project. Prior to the First Completion Date Hydro personnel who will be providing the Operations and Maintenance Services will be entitled to attend at the Wuskwatim Project to become fully familiar with the operating and maintenance functions of the Wuskwatim Project. The Limited Partnership shall compensate Hydro for all actual direct and indirect costs and expenses incurred by Hydro in familiarizing itself with operating and maintenance functions of the Wuskwatim Project and that were required to be expended in order to be ready to commence providing Operations and Maintenance Services, including attending at the Wuskwatim Project. These costs and expenses will be billed by Hydro to the Limited Partnership in accordance with Article VIII.
- (4) The Limited Partnership confirms and acknowledges:

- (a) Hydro shall operate and maintain the Wuskwatim Project as an integrated part of the Integrated Power System;
- (b) subject to the provisions of Section 4.2, Hydro retains the right and authority to operate and maintain other facilities that are a component of the Integrated Power System, as Hydro in its sole discretion deems appropriate, without limitation, notwithstanding that Hydro will be providing operations and maintenance services for the Wuskwatim Project and notwithstanding that Hydro in doing what it considers to be beneficial to the Integrated Power System, may not be able to maximize the benefits which otherwise may be available to the Limited Partnership from the Wuskwatim Generating Station;
- (c) that under no circumstances can it, the Arbitrator, the General Partner or any Person on the Limited Partnership's behalf directly or indirectly direct or constrain Hydro's sole ability and authority to control, operate and dispatch the Integrated Power System, including the Wuskwatim Project and the Wuskwatim Generating Station as part of that system, in such manner as Hydro in its sole discretion deems appropriate, without limitation in accordance with the rights and authority granted pursuant to the provisions of the Systems and Operations and Dispatch Agreement and without limiting the generality of the foregoing take any action that will adversely impact on safety considerations in respect of the operation of the Integrated Power System including the Wuskwatim Project and the Wuskwatim Generating Station as part of that system;
- (d) certain rights and authority relating to the Wuskwatim Project have been granted by the Limited Partnership to Hydro pursuant to the provisions of the Construction Agreement, the Interconnection and Operating Agreement and the System Operations and Dispatch Agreement and the rights and authority granted pursuant to the provisions of this Agreement are in addition to the rights granted pursuant to those agreements; and
- (e) Hydro shall be the operational contact on behalf of the Limited Partnership with full authority to receive and provide directions and instructions on behalf of the

Limited Partnership, as required from time to time in respect of all matters concerning the Operations and Maintenance Services during the Term of this Agreement.

#### **4.2 Operations and Maintenance Services Parameters.**

- (1) Hydro and the Limited Partnership agree that in the exercise of Hydro's right and authority to provide the Operations and Maintenance Services pursuant to the provisions of this Agreement, it shall do so in an integrated manner together with other facilities operated by Hydro as part of the Integrated Power System, and reasonably consistent with the provision of similar services to those other facilities, without regard to the ownership of the Wuskwatim Project and the existence of the Power Purchase Agreement (the "**Service Parameters**").
- (2) Hydro shall conduct an internal audit of the manner in which it provides the Operations and Maintenance Services to the Limited Partnership at least once every five (5) year period during the Term commencing with the five (5) year period ending on the year end for the Limited Partnership occurring five (5) years after the Final Closing and shall provide same to the Limited Partnership.
- (3) The manner in which the Operations and Maintenance Services were performed by Hydro from time to time pursuant to this Agreement may be reviewed in the manner provided in Article XVIII of the PDA.

#### **4.3 Operations and Maintenance Services Costs.**

- (1) Subject to the provisions of Section 4.3(3), the Limited Partnership shall pay Hydro all actual direct and indirect costs and expenses incurred by Hydro (with the exception any of the costs incurred by Hydro in building the CRD and any of the costs incurred by Hydro and allocated to the operation of the CRD) in providing the Operations and Maintenance Services pursuant to the provisions of this Agreement (collectively the "**Operations and Maintenance Costs**"), which costs and expenses shall include but are not limited to:
  - (a) the actual direct and indirect costs and expenses associated with the Hydro personnel or Subcontractors performing the Operations and Maintenance Services on the site of the Wuskwatim Project, including those Hydro personnel or

Subcontractors who are not on the site of the Wuskwatim Project but are providing a component of the Operations and Maintenance Services;

- (b) actual costs and expenses of the tools, equipment and parts purchased by Hydro for use or installation in the Wuskwatim Project required in the provision of the Operations and Maintenance Services;
  - (c) applicable administrative and general overhead costs and expenses related to the provision of the Operations and Maintenance Services; and
  - (d) actual direct and indirect costs and expenses reasonably allocated to the Wuskwatim Project which are a component of the overall direct and indirect costs and expenses incurred in the provision of operations and maintenance services to all of the facilities that are part of the Integrated Power System.
- (2) Operations and Maintenance Costs shall be billed to the Limited Partnership and paid to Hydro in accordance with Article VIII.
- (3) The Operations and Maintenance Costs will be determined and allocated to the Wuskwatim Project by Hydro in accordance with Hydro's guidelines, procedures, decisions, practices and policies as may be made or established and as may be amended by Hydro, from time to time, subject to Hydro's calculating such costs in accordance with the following criteria (the "**Costs Calculation Criteria**"):
- (a) in a manner which is materially consistent with the methodology that was used at the relevant time for all facilities that Hydro performs operations and maintenance services for and that form part of the Integrated Power System; and
  - (b) without regard to the ownership of the Wuskwatim Project and the existence of the Power Purchase Agreement.
- (4) Hydro shall provide the Limited Partnership within one hundred and twenty (120) days of the year end of the Limited Partnership with a written report on how the Operations and Maintenance Costs were determined and charged to the Limited Partnership, for that prior year, which shall include an itemized listing of all Operation and Maintenance Costs billed to the Limited Partnership.

- (5) Operations and Maintenance Costs allocated by Hydro to the Limited Partnership from time to time pursuant to the provisions of this Agreement may be reviewed in the manner provided in Article XVIII of the PDA.

## **ARTICLE V COVENANTS**

### **5.1 Covenants.**

During the Term of this Agreement 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) **Operation of the Wuskwatim Project.** The Limited Partnership shall comply with all Limited Partnership Contractual Obligations, including the System Operations and Dispatch Agreement and the Interconnection and Operating Agreement.
- (4) **Applicable Reliability Organization and Government 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 as a result of Hydro operating and maintaining the Wuskwatim Project in accordance with the provisions of this Agreement.
- (5) **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; and
  - (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.

- (6) **Fines and Penalties.** If fees, levies, fines, penalties, or costs are assessed against Hydro by any Governmental Authority in respect of Hydro operating and maintaining the Wuskwatim Project, (except for any operations and maintenance services where Hydro was found liable to the Limited Partnership for the manner in which they were performed due to Hydro's gross negligence or willful misconduct) or due to non-compliance by the Limited Partnership of any provision of this Agreement, 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.
- (7) **Taxes and Fees.** Subject to Section 4.1(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 which 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, the Limited Partnership or the Wuskwatim Project or by reason of the Parties entering into this Agreement or in respect of Hydro operating and maintaining the Wuskwatim Project, including in respect of any materials, equipment or services supplied by Hydro or on work or services performed by Hydro 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 on account of the amounts that have been paid.
- (8) **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 which may be payable by Hydro) fees or assessments ("**Additional Costs**") reasonably attributable to the Parties entering into this Agreement or Hydro operating and maintaining the Wuskwatim Project,



pursuant to the provisions of this Agreement, Hydro may bill the Limited Partnership 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 or assessments) in which it would have been if it had not be liable for the Additional Costs.

- (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 (or if applicable, of any of Hydro's Affiliates) 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 and the Interconnection and Operating Agreement.
- (10) **Access.** The Limited Partnership shall provide and grant to Hydro access to the Wuskwatim Project as may be required by Hydro together with all information, documents or data related to the Wuskwatim Project that Hydro may require.
- (11) **Capital Improvements.** The Limited Partnership shall pay all actual direct and indirect costs and expenses associated with Capital Improvements and if incurred by Hydro the costs and expenses shall be billed to the Limited Partnership and paid to Hydro in accordance with Article VIII.

## 5.2 **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 in 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;
- (b) 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 Interconnection and Operating Agreement or the Power Purchase 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 provisions of those agreements. This 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 these agreements due to Hydro's gross negligence or willful misconduct.

## **ARTICLE VI**

### **LIMITATION OF HYDRO LIABILITY**

#### **6.1 Limitation of Hydro Liability.**

Subject only to the provisions of Sections 4.2(3) and 4.3(5), Hydro shall not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise to the Limited Partnership for any damages whatsoever, including without limitation, direct, incidental, consequential, punitive, special, exemplary, or indirect damages arising or resulting from any act or omission in any way associated with any provision of this Agreement, including in respect of the provision of the Operating and Maintenance Services, except to the extent Hydro is found liable for gross negligence or willful misconduct, in which case Hydro shall not be liable for incidental, consequential, punitive, special, exemplary or indirect damages.

**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:

- (1) 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
- (2) 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 the Limited Partnership 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 the 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:

- (1) Hydro is a corporation duly incorporated and organized and validly subsisting under the Laws of 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 this Agreement; and
- (2) 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 the 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 Hydro to the Limited Partnership or such other time period as Hydro shall designate. Bills shall be delivered within fifteen 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 the Limited Partnership. 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 date falls on a day that is not a 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 for the bank designated by Hydro pursuant to Section 8.1(5) plus two percent (2%) per annum to the overdue amount billed for the period the payment is late.
- (4) If the Limited Partnership disputes all or any part of a bill, the Limited Partnership shall pay the amount of the bill not in dispute to Hydro and shall pay into an independent trust 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 trust account into which the disputed amount has been deposited.

- (5) Payment of all bills shall be made by interbank wire transfer to Hydro's bank in accordance with the account instructions as provided to the Limited Partnership and payment shall be deemed made when received by the designated bank.

**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 corporate 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 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 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.**

Subject to the limitations referenced in Article VI, in respect of the Limited Partnership's rights against Hydro, the remedies provided for herein are cumulative.

**ARTICLE X  
DISPUTE RESOLUTION**

**10.1 General.**

Subject to Section 10.2, all disputes, differences or claims, or apprehended disputes, differences 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 any review of the Operation and Maintenance Costs pursuant to Section 4.3(5) or any review of the Operating and Maintenance Services pursuant to Section 4.2(3), which reviews shall be conducted pursuant to the provisions of Article XVIII of the PDA. Notwithstanding the provisions of Article X an Arbitrator appointed pursuant to Article X shall have no jurisdiction to consider or review any matters referred to or referable to an Expert under Article XVIII of the PDA, except with respect to the enforcement of a decision of such Expert made in accordance with the provisions of Article XVIII of the PDA. Under no circumstances can the Arbitrator directly or indirectly direct or

constrain Hydro's sole ability and authority to control, operate and dispatch the Integrated Power System, including the Wuskwatim Project and the Wuskwatim Generating Station as part of that system, in such manner that Hydro, in its sole discretion deems appropriate, without limitation in accordance with the rights and authority granted pursuant to the provisions of the System Operations and Dispatch Agreement and without limiting the generality of the foregoing take any action that will adversely impact on safety considerations in respect of the operation of the Integrated Power System, including the Wuskwatim Project and the Wuskwatim Generating Station as part of that system.

### **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 10.6 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 had, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to Section 10.6, 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 and 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 B.

**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  
FORCE MAJEURE**

**11.1 Force Majeure.**

Neither Party shall be responsible or liable for, or be deemed in breach of any provision of this Agreement because of, any delay in the performance of their respective obligations pursuant to this Agreement due solely to circumstances beyond the reasonable control and without the fault or negligence of the Party experiencing such delay, including, but not limited to, acts of God; unusually severe weather conditions; strikes or other labour difficulties; war; riots; requirements, actions or failures to act on the part of Governmental Authorities preventing performance; inability despite due diligence to obtain required permits or

licences; accident; fire; damage to or breakdown of necessary facilities; or transportation delays or accidents (such causes hereinafter called "Force Majeure"); provided, however, the Party experiencing the Force Majeure shall exercise due diligence in endeavouring to overcome any Force Majeure impediment to its performance, but settlement of its labour difficulties shall be entirely within its discretion; and provided further that the Party experiencing the Force Majeure shall promptly give oral notification to the other Party. Such notification shall be confirmed in writing within five (5) days after such Party has learned of the Force Majeure and every thirty (30) Days thereafter, and such written notification shall give a full and complete explanation of the Force Majeure delay and its cause, the status of the Force Majeure, and the actions such Party is taking and proposes to take to overcome the Force Majeure. The Party experiencing the delay shall undertake reasonable measures to remedy the Force Majeure with minimum impact to the Wuskwatim Project operations. In the event of Force Majeure the Limited Partnership will continue to pay Operations and Maintenance Costs to Hydro for the performance of any part of the services that were deemed necessary to be performed; and any reasonable wage or expense obligations incurred by Hydro during the Force Majeure.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

#### **12.1 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 C 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.

**12.2 Indemnification of Hydro.**

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, interest, penalties and amounts paid in settlement, suffered or incurred by Hydro as a result of Hydro operating and maintaining the Wuskwatim Project except for operation and maintenance services where Hydro was found liable to the Limited Partnership for the manner in which the operations and maintenance services were performed due to Hydro's willful misconduct or 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 and any breach or non-performance by the Limited Partnership of any covenant to be performed by or pursuant to this Agreement.

**12.3 Indemnification of the Limited Partnership.**

Hydro agrees to indemnify and save harmless the Limited Partnership and its representatives 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, interest, penalties and amounts paid in settlement, suffered or incurred by the Limited Partnership, in respect of Hydro operating and maintaining the Wuskwatim Project where Hydro was found liable to the Limited Partnership for the manner in which the operations and maintenance services were performed due to Hydro's willful misconduct.

**12.4 Further Assurances.**

The Parties 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 another Party 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.

**12.5 Time of the Essence.**

Time shall be of the essence of this Agreement.

**12.6 Enurement.**

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

**12.7 Counterparts.**

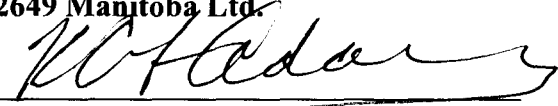
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

**12.8 Amendments.**

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

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

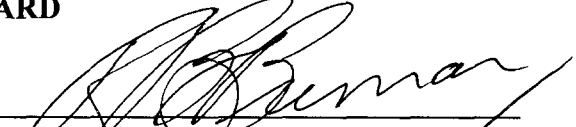
**WUSKWATIM POWER LIMITED  
PARTNERSHIP, by its General Partner  
5022649 Manitoba Ltd.**

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**  
**OPERATIONS AND MAINTENANCE SERVICES**  
**SCOPE OF WORK**

The following is the scope of work related to the Operations and Maintenance Services. The scope of work is subject to Hydro's right and authority to make such revisions as it may deem appropriate.

Mobilization and Staffing

Hydro shall recruit, interview, hire and train or otherwise supply qualified engineers, administrators, managers, skilled technicians and craftsmen, and other personnel necessary for the performance of Operations and Maintenance Services. Employees of Hydro shall be phased in and out of the site of the Wuskwatim Project in accordance with Hydro's work force plan.

Budget and Operating Plan Preparation

Hydro shall prepare operations and maintenance budgets and Operating Plans for each Budgetary Period.

Services to be Performed by Hydro

Throughout the Term, Hydro shall:

- (a) Provide sufficient numbers of qualified personnel who shall be trained as necessary for the performance of the Operations and Maintenance Services;
- (b) Provide to the Limited Partnership a listing of the Operations and Maintenance Services and update same as required;
- (c) Develop an inventory system for Consumables required for the proper maintenance and upkeep of civil structures and dykes;
- (d) Develop a Spare Parts inventory system, sufficiently integrated with the maintenance system and the accounting system. Such inventory system

shall provide for maintenance and access to Spare Parts in required quantities;

- (e) Procure equipment necessary for Hydro to perform the Operations and Maintenance Services in accordance with the operations and maintenance budget and Operating Plan;
- (f) Procure uniforms and protective clothing for employees, as required;
- (g) Create records, files, cost accounting, reporting, invoicing and work control procedures necessary for the performance of the Operations and Maintenance Services;
- (h) Develop a maintenance program. Such maintenance program shall encompass both preventive and corrective maintenance and shall be coordinated with other agreements related to the operation and maintenance of the Wuskwatim Project including the receipt of the information under those agreements. The maintenance program shall include, but not be limited to the following issues:
  - (i) corrective, preventive and predictive maintenance routines;
  - (ii) work order formulation and tracking;
  - (iii) personnel or craft requirements;
  - (iv) special tool requirements;
  - (v) spare parts requirements;
  - (vi) reference material;
  - (vii) planning schedules;
  - (viii) equipment maintenance history;
  - (ix) performance monitoring;

- (x) warranty monitoring; and
  - (xi) Status Reports.
- (i) Create or adapt existing programs as required to meet local conditions, Laws, and requirements of the Limited Partnership's insurers in respect of the following matters:
- (i) quality control;
  - (ii) security;
  - (iii) safety; and
  - (iv) fire prevention and protection.
- (j) Assist in obtaining and the renewal of all Licences required for the performance of the Operations and Maintenance Services;
- (k) Remove and dispose of waste generated by the Wuskwatim Project in an environmentally responsible manner;
- (l) Establish and maintain office systems, computers, computer networks, communications systems, information security, furniture, and other office equipment as necessary to perform Hydro's obligations;
- (m) Maintain vehicles, including managing operating expenses and replacement of vehicles in accordance with the Operating Plan; and
- (n) Establish and maintain a security program at the site of the Wuskwatim Project in accordance with the Operating Plan.

### Organization

Hydro's manager shall be vested with full decision making authority and full responsibility for all day-to-day obligations of Hydro in connection with the Operation and Maintenance Services. The organizational structure, communications, accountabilities, and responsibilities shall be determined by Hydro, and shall factor in obligations of any existing labour union contracts.

### Hours of Operation

Hydro shall provide the Operations and Maintenance Services required to operate the Wuskwatim Project twenty-four (24) hours per day, seven (7) days per week including all holidays. Personnel may be scheduled to work on rotating shifts or perform overtime as required to meet the operational needs of the Wuskwatim Project. Additional personnel may be recalled to cover emergencies outside of normal working hours.

### Management

Hydro's manager shall be responsible for overall supervision of the Hydro's work force and management of resources in a manner to achieve performance objectives of the Operating Plan. Hydro's management responsibilities shall include but are not limited to:

- (a) Maintaining a training program to maintain proficiency and keep all personnel current with current technology, and the Operations and Maintenance Services. Hydro shall establish a regular training program which will include the initial training of any newly employed personnel and the ongoing training of existing personnel.
- (b) Compliance with applicable Laws that require the licensing of the Hydro's personnel working at the Wuskwatim Project and maintaining, applying for, and providing notices under all permits.
- (c) Evaluating operations and implementing recommendations on cost effective ways to improve the Wuskwatim Project.

- (d) Preparing and submitting Status Reports to the Limited Partnership. Status Reports may include, but is not be limited to, such information as the total quantity of energy actually produced, energy consumption at the Wuskwatim Project, the total quantity of energy provided to the Integrated Power System, and consolidated data taken from the Daily Logs for the period. The Status Reports may be required to include a consolidation of data taken from the Daily Logs, and information concerning operating problems, outages and other circumstances that may have affected the level of production.
- (e) Maintaining a safety program as necessary to comply with all applicable Laws and safety requirements to prevent injury to persons or damage to Property. The program will comply with current regulations and will address accident prevention, safety education, fire prevention, and safety lock-out and tag-out procedures.
- (f) Conducting an on-going quality control program to ensure proper operation and maintenance of the Wuskwatim Project. Procedures shall include the use of logs and checklists to document that the specified procedures, inspections, and tests have been satisfied. The procedures shall encompass, as a minimum, all recommendations, procedures, tests, and inspections recommended and/or specified by the manufacturers and vendors of equipment. The program shall also include inspections to verify that all procured material meets the applicable specifications. Records will be maintained of quality control tests and inspection reports.
- (g) Maintaining complete and auditable records for all Operations and Maintenance Costs.

### Procurement

Hydro shall purchase, store and maintain all materials required for the proper operation and maintenance of the Wuskwatim Project in accordance with the logistics and procurement section of the Operating Plan. The logistics and procurement section will detail the



procedures to be followed and the manner in which logistic responsibilities will be accomplished including but not limited to:

- (a) Proposed levels expressed in days of supply for the major categories of supplies and other items to be stocked; and
- (b) Description of purchasing, receiving, accountability, and control procedures to be used.

SCHEDULE B

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 Operations and Maintenance 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 C

### NOTICES

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

Fax: (204) 474-4947

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

Fax: (204) 474-4947