
**SYSTEM OPERATIONS AND
DISPATCH AGREEMENT**

between

WUSKWATIM POWER LIMITED PARTNERSHIP

– and –

THE MANITOBA HYDRO-ELECTRIC BOARD

DATED June 28, 2006

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SYSTEM OPERATIONS AND DISPATCH 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 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 the Limited Partnership has agreed to grant to Hydro the right and authority to control and operate the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station, 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 3.2(8).

“**Advanced Facilities**” means the following components of the Interconnection System Upgrades:

- (i) 230 kV transmission line (designated as H75P) approximately 165 km in length from Herblet Lake Station to Ralls Island Station;
- (ii) modification of 230 kV Herblet Lake Station to connect the new transmission line H75P to Herblet Lake Station from Ralls Island Station;
and
- (iii) modification of 230 kV Ralls Island Station to connect the new transmission line H75P to Ralls Island Station from Herblet Lake Station.

“**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 System Operations and Dispatch 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 8.4.

“**Arbitrator**” means an arbitrator appointed in accordance with the procedures set out in Article VIII 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.

“**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 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 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.

“**Control and Operation Parameters**” shall have the meaning specified in Section 2.2(1).

“**Costs Calculation Criteria**” shall have the meaning specified in Section 2.4(3).

“**Dispute**” shall have the meaning specified in Section 8.4.

“**Dispute Notice**” shall have the meaning specified in Section 8.4.

“**Event of Hydro Default**” shall have the meaning specified in Section 7.3.

“**Event of Limited Partnership Default**” shall have the meaning specified in Section 7.1.

“Expert” shall have the meaning ascribed thereto in the PDA.

“Force Majeure” shall have the meaning specified in Section 9.1.

“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.

“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 9th 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.

“Interconnection Letter Agreements” means the agreements entered into between Hydro (Transmission and Distribution Business Unit) and Hydro (Power Supply Business Unit) dated June 2, 2004 and undated, whereby pursuant thereto, Hydro (Power Supply Business Unit) has paid or will pay to Hydro (Transmission and Distribution Business Unit), a portion of the costs related to the Interconnection System Upgrades and the Transmission Owner Interconnection Facilities, including engineering, design, siting activities and procurement of long lead time items, prior to the effective date of the Interconnection and Operating Agreement.

“Interconnection System Upgrades” shall have the meaning ascribed thereto in the Interconnection and Operating Agreement.

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

“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 claim or other communication from any Person.

“Operating Costs” shall have the meaning specified in Section 2.4(1).

“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.

“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.

“**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 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 8.5.

“**Respondent**” shall have the meaning specified in Section 8.5.

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

“**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.**

- (1) 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 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 schedule 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
CONTROL, OPERATION AND DISPATCH

2.1 Control, Operation and Dispatch.

- (1) Subject to the provisions of Section 2.2, the Limited Partnership grants to Hydro the right and authority to, and Hydro agrees to, control and operate the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station during the term of this Agreement, 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.
- (2) The Limited Partnership confirms and acknowledges:
 - (a) Hydro shall control, operate and dispatch the Wuskwatim Generating Station as an integrated part of the Integrated Power System;
 - (b) subject to the provisions of Section 2.2, Hydro retains the right and authority to control, operate and dispatch the Integrated Power System, as Hydro in its sole discretion deems appropriate, without limitation, notwithstanding that Hydro will be controlling, operating and dispatching 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) 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;

- (d) certain rights and authority relating to control, operation and dispatch of 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 Operations and Maintenance Agreement and the rights and authority granted pursuant to the provisions of this Agreement are in addition to the rights and authority granted pursuant to those agreements;
- (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 operating and control matters concerning the Wuskwatim Project including matters related to the dispatch of the Wuskwatim Generating Station;
- (f) Hydro is expressly granted the right to include the Wuskwatim Generating Station in the dispatch schedules prepared for the facilities that form part of the Integrated Power System under its operational control, wherein Hydro will determine the economic value of the energy output of all of those facilities and rank in economic order the dispatch of all such facilities, which dispatch schedule will be used by Hydro pursuant to the provisions of the Interconnection and Operating Agreement to dispatch the Wuskwatim Generating Station in an integrated fashion together with all other facilities operated by Hydro as part of the Integrated Power System; and
- (g) Hydro is expressly granted the right to prepare schedules of planned outages for the Wuskwatim Generating Station on behalf of the Limited Partnership which are required pursuant to the provisions of the Interconnection and Operating Agreement and to coordinate the planning and scheduling of preventative and corrective maintenance for the Wuskwatim Generating Station on behalf of the Limited Partnership, as required pursuant to the provisions of the Interconnection and Operating Agreement, in an integrated manner together with all other facilities operated by Hydro as part of the Integrated Power System, and in

conjunction with the services provided by Hydro pursuant to the provisions of the Operations and Maintenance Agreement and the Interconnection and Operating Agreement to enable Hydro to dispatch the Wuskwatim Generating Station in an integrated manner together with all other facilities operated by Hydro as part of the Integrated Power System.

2.2 Control and Operation Parameters.

(1) Hydro and the Limited Partnership agree that during the term of this Agreement Hydro will have fulfilled all of its obligations and duties to the Limited Partnership in respect of the control and operation of the Wuskwatim Project including matters relating to the dispatch of the Wuskwatim Generating Station unless:

- (a) in the exercise of Hydro's right and authority to control and operate the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station pursuant to the provisions of this Agreement, it did not do so in an integrated manner together with other facilities operated by Hydro, as part of the Integrated Power System, without regard to the ownership of the Wuskwatim Project and the existence of the Power Purchase Agreement; or
- (b) Hydro was controlling, operating and dispatching the Integrated Power System including the Wuskwatim Project and the Wuskwatim Generating Station as part of that system in a manner that was materially prejudicial to the reliability of, and the economic benefits to be derived from, the Wuskwatim Project without the intention of benefiting the reliability of, and the economic benefits to be derived from, the Integrated Power System,

(collectively, the "**Control and Operation Parameters**").

(2) Hydro shall provide the Limited Partnership within one hundred and twenty (120) days of the end of each fiscal year of the Limited Partnership with a written report on the control, operation and dispatch of the Integrated Power System, including the Wuskwatim Generating Station as part of that system, which will include the daily averages for each of the following:

- (a) Missi control structure outflows;
 - (b) Notigi control structure outflows;
 - (c) South Indian Lake water levels;
 - (d) Wuskwatim Generating Station power house outflows;
 - (e) Wuskwatim Project spill;
 - (f) Wuskwatim Generating Station generation;
 - (g) Lake Winnipeg water levels;
 - (h) Lake Winnipeg outflows;
 - (i) Split Lake inflows; and
 - (j) Split Lake water levels.
- (2) The control and operation of the Wuskwatim Project including any matters related to the dispatch of the Wuskwatim Generating Station by Hydro pursuant to the provisions of this Agreement may be reviewed in the manner provided in Article XIX of the PDA.

2.3 Term.

This Agreement shall become effective on the Construction Start Date and shall continue, unless terminated pursuant to the provisions of this Agreement.

2.4 Operating Costs.

- (1) Subject to the provisions of Section 2.4(5) the Limited Partnership shall pay Hydro all actual direct and indirect costs and expenses incurred by Hydro (with the exception of 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 controlling and operating the Wuskwatim Project, including matters related to the dispatch of the Wuskwatim Generating Station pursuant to the provisions of this

Agreement (collectively the “**Operating Costs**”) which costs and expenses shall include but are not limited to:

- (a) the actual direct and indirect costs and expenses associated with Hydro personnel or third parties on Hydro’s behalf performing services related to the control and operation of the Wuskwatim Project, including matters relating to the dispatch of the Wuskwatim Generating Station;
 - (b) applicable administrative and general overhead costs and expenses; and
 - (c) 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 by Hydro in the provision of services to control and operate all facilities that are part of the Integrated Power System, including matters related to the dispatch of those facilities.
- (2) Operating Costs shall be billed to the Limited Partnership and paid to Hydro in accordance with Article VI.
- (3) The Operating 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 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 are part of the Integrated Power System which Hydro controls, operates and dispatches; 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 Operating Costs were determined and charged to the Limited Partnership, for that

prior year, which shall include an itemized listing of all Operating Costs billed to the Limited Partnership.

- (5) Operating 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 XIX of the PDA.

ARTICLE III COVENANTS

3.1 Covenants of Hydro.

Notwithstanding the assignment by Hydro (Power Supply Business Unit) of its interest in the Interconnection and Operating Agreement to the Limited Partnership, Hydro shall pay on the Limited Partnership's behalf all amounts that are required to be paid to Hydro (Transmission and Distribution Business Unit) pursuant to the provisions of the Interconnection and Operating Agreement for:

- (i) construction and installation costs for the Advanced Facilities, except for payments required pursuant to Sections 4.1.5.1, 4.1.5.2, 4.1.9, and 18.2.2 of the Interconnection and Operating Agreement;
- (ii) operating and maintenance costs for the Advanced Facilities; and
- (iii) the cost of the operating studies referred to in Section 4.1.9 of the Interconnection and Operating Agreement.

3.2 Covenants of the Limited Partnership.

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) **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 provisions of this Agreement and Hydro's (or any Affiliate of Hydro) guidelines, procedures, decisions, practices and policies, as amended from time to time and communicated by Hydro to the Limited Partnership and the provisions of the Limited Partnership Contractual Obligations, including the Operations and Maintenance Agreement, and the Interconnection and Operating Agreement.
- (4) **Applicable Reliability Organization and Governmental Authority.** The Limited Partnership shall at the Limited Partnerships 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's controlling and operating the Wuskwatim Project including matters relating to the dispatch of the Wuskwatim Generating Station in accordance with the provisions of this Agreement.
- (2) **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.
- (3) **Fines and Penalties.** If fees, levies, fines, penalties, costs, or expenses are assessed against Hydro by any Governmental Authority in respect of Hydro controlling and operating the Wuskwatim Project, including matters relating to the dispatch of the Wuskwatim Generating Station (except for any control, operation or dispatch function where Hydro was found liable to the Limited Partnership for the manner in which it was 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.

- (4) **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 Hydro's controlling and operating the Wuskwatim Project including matters relating to the dispatch of the Wuskwatim Generating Station in accordance with the provisions of 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 General Partnership in accordance with Article VI and receive payment on account of the amounts that have been paid.
- (5) **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 Hydro's control and operation of the Wuskwatim Project, including matters relating to the dispatch of the Wuskwatim Generating Station pursuant to the provisions of this Agreement, Hydro may bill the Limited Partnership for such Additional Costs pursuant to Article VI 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 been liable for the Additional Costs.

- (6) **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 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 Interconnection and Operating Agreement.
- (7) **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.
- (8) **Interconnection Letter Agreements.** The Limited Partnership Agrees to pay to Hydro immediately after the Initial Closing Date all amounts Hydro (Power Supply Business Unit) has paid to Hydro (Transmission and Distribution Business Unit) pursuant to the provisions of the Interconnection Letter Agreements and all amounts it has paid pursuant to the provisions of the Interconnection and Operating Agreement, if any, prior to the assignment to the Limited Partnership, together with all interest that has accrued or been recorded by Hydro in accordance with Hydro's accounting policies on the aforesaid amounts paid by Hydro (Power Supply Business Unit).
- (9) **Limited Partnership Assignment and Direction.** In consideration of the payments being made by Hydro on the Limited Partnership's behalf pursuant to Section 3.1, the Limited Partnership irrevocably assigns and directs to Hydro any cash repayment, including any interest component, that it is entitled to receive pursuant to Sections 1.5.10.1, 1.5.10.2, 1.5.10.3 and 1.5.10.4 of Appendix A to the Interconnection and Operating Agreement and agrees to comply with the reasonable requests of Hydro to ensure the receipt by Hydro of the aforesaid amounts. Subject to the Limited Partnership's compliance with the aforesaid provision the Limited Partnership shall not be required to repay the amounts paid on its behalf pursuant to Section 3.1. The Parties confirm that Section 3.1 and this Section 3.2(12) are not in any way intended to limit the assignment by Hydro

(Power Supply Business Unit) of its interest in the Interconnection and Operating Agreement to the Limited Partnership and in accordance with the provisions of that assignment and Article XIV of the Interconnection and Operating Agreement and the Parties do not intend to restrict or limit the release of Hydro (Power Supply Business Unit) from all of its obligations under the provisions of the Interconnection and Operating Agreement and the assumption of all of those obligations by the Limited Partnership.

3.3 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; or
- (b) to claim Hydro contributed to the breach by the Limited Partnership 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 Operations and Maintenance 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 those agreements due to Hydro's gross negligence or willful misconduct.

ARTICLE IV
LIMITATION OF HYDRO LIABILITY

4.1 **Limitation of Hydro Liability.**

Subject to the provisions of Sections 2.2(3) and 2.4(5) and compliance with the covenant contained in Section 3.1, 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 Hydro controlling, operating or dispatching the Integrated Power System, including the Wuskwatim Project and the Wuskwatim Generating Station as part of that system and controlling and operating the Wuskwatim Project including matters related to the dispatch of the Wuskwatim Generating Station, 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 V
REPRESENTATIONS AND WARRANTIES

5.1 **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.

5.2 Survival of Representations and Warranties of the Limited Partnership.

All the representations and warranties of the Limited Partnership contained in Section 5.1 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.

5.3 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.

5.4 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 the Hydro Act; 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.

5.5 Survival Representations and Warranties of Hydro.

All the representations and warranties of Hydro contained in Section 5.4 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.

5.6 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 VI
BILLING, PAYMENTS AND ADJUSTMENTS**

6.1 Billing, Payments and Adjustments.

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.

- (1) 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.
- (2) 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 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 established by the bank designated by Hydro pursuant to Section 6.1(5), plus two percent (2%) per annum to the overdue amount billed for the period the payment is late.

- (3) 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.
- (4) 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 VII EVENTS OF DEFAULT

7.1 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 thirty (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.

7.2 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 7.2 shall be a cost to be paid to Hydro by the Limited Partnership in accordance with provisions of this Agreement.

7.3 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.

7.4 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 7.4 shall be a cost to be paid to the Limited Partnership by Hydro in accordance with provisions of this Agreement.

7.5 Remedies Cumulative.

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

**ARTICLE VIII
DISPUTE RESOLUTION**

8.1 General.

Subject to Section 8.2, 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 VIII.

8.2 Limitation.

The provisions of this Article VIII do not apply to any review of the Operating Costs pursuant to Section 2.4(5) or any review of the control and operation of the Wuskwatim Project including this dispatch of the Wuskwatim Generating Station by Hydro pursuant to Section 2.2(3), which review shall be conducted pursuant to the provisions of Article XIX of the PDA. Notwithstanding the provisions of this Article VIII an Arbitrator appointed pursuant to this Article VIII shall have no jurisdiction to consider or review any matters referred to or referable to an Expert under Article XIX of the PDA except with respect to the enforcement of a decision of such Expert made in accordance with the provisions of Article XIX 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 as Hydro in its sole discretion deems appropriate, without limitation.

8.3 Endeavour to Resolve.

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

8.4 Arbitration.

A Party (an "**Applicant**") who wants to settle a dispute, difference or claim or apprehended dispute, difference or claim referred to in Section 8.1 (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.

8.5 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.

8.6 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 VIII, 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.

8.7 Appointment of Arbitrator.

Subject to Section 8.8, 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.

8.8 Qualifications of Arbitrator.

An Arbitrator appointed pursuant to Section 8.7 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 had, within a period of one year prior to the date on which the matter was referred to arbitration pursuant to Section 8.4, acted or been a member of a firm that has acted as solicitor, counsel or agent for any of the Parties.

8.9 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.

8.10 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.

8.11 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.

8.12 Counsel.

The Parties may be represented by counsel.

8.13 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.

8.14 Arbitration Award.

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

8.15 Award Final.

The decision of the Arbitrator shall be final and binding on both 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).

8.16 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.

8.17 **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.

8.18 **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.

8.19 **Arbitrator's Undertaking.**

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

8.20 **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.

8.21 **Days.**

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

ARTICLE IX
FORCE MAJEURE

9.1 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 Operating Costs to Hydro for controlling and operating the Wuskwatim Project, including any matters relating to the dispatch of the Wuskwatim Generating Station that Hydro deems necessary to be performed during the Force Majeure.

ARTICLE X
GENERAL PROVISIONS

10.1 **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.

10.2 **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, interest, penalties and amounts paid in settlement suffered or incurred by Hydro as a result of Hydro controlling and operating the Wuskwatim Project, including the dispatch of the Wuskwatim Generating Station (except for any control, operation or dispatch function where Hydro was found liable to the Limited Partnership for the manner in which it was performed due to Hydro's gross negligence or 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 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.

10.3 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 controlling and operating the Wuskwatim Project, including the dispatch of the Wuskwatim Generating Station, where Hydro was found liable to the Limited Partnership for the manner in which these functions were performed due to Hydro's willful misconduct.

10.4 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.

10.5 Time of the Essence.

Time shall be of the essence of this Agreement.

10.6 Enurement.

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

10.7 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.

10.8 Waivers and Amendments.

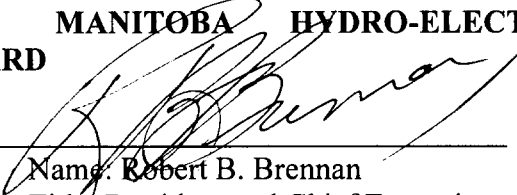
Any term, covenant or condition of this Agreement may be amended only with the written consent of the Parties.


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

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 System Operations and Dispatch 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