

OPERATIONS & MAINTENANCE AGREEMENT

THIS AGREEMENT made effective March 7, 2008.

BETWEEN:

HEARTLAND TRANSMISSION, L.P., a limited partnership
formed under the laws of the Province of Alberta
(hereinafter referred to as the "**Partnership**")

OF THE FIRST PART

- and -

ALTALINK, L.P., a limited partnership organized under the laws
of Alberta, having its head office in the City of Calgary, in the
Province of Alberta
(hereinafter referred to as the "**Operator**")

OF THE SECOND PART

WHEREAS:

- A. The Partnership has been formed to pursue the design, development, construction, ownership, operation and maintenance of transmission facilities along a route or routes, as determined pursuant to the applicable AUC approval process, substantially within the TUC (the "**Project**"), with the intent that the Partnership will own such transmission facilities, together with all associated real, personal and mixed property (whether tangible or intangible) (the "**Project Facilities**").
- B. Pursuant to the Partnership Agreement, it was agreed that the Operator would provide to the Partnership certain operations and maintenance services for the physical operation and maintenance of the Project Facilities from and after the Completion Date.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the covenants and agreements herein contained, the Parties hereto agree as follows:

1. DEFINITIONS, INTERPRETATION AND SCHEDULES

1.1 Definitions

Unless a clear contrary intention appears, the following terms and expressions have the following meanings when used in this Agreement:

"**Administrative Services**" has the meaning ascribed to such term in Section 6.1.

"AESO" means the Alberta Electric System Operator or any Authorized Authority succeeding to the powers of such operator.

"Affiliate" of any Person means any other Person who directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" means this Operations & Maintenance Agreement.

"AltaLink Heartland" means AltaLink Heartland Holdings, L.P., an initial Limited Partner of the Partnership.

"Annual Budget" means the annual operating and capital budget for the Partnership as prepared and submitted by the Operating Manager to, and approved and revised from time to time by, the Board in accordance with the provisions of the Shareholders' Agreement.

"Annual Operations and Maintenance Plan" means the operations and maintenance plan in respect of the Project Facilities for each Fiscal Year to be prepared annually by the Operating Manager as part of the Annual Budget, which plan shall contain the proposed operating and capital maintenance activities for such Fiscal Year and the forecasted Regulated Operating Expenses and Maintenance Capital Costs for such Fiscal Year.

"Applicable Law" means, with respect to any Person or property (i) the common law and principles of equity, (ii) all federal, provincial, state, municipal and local laws, treaties, statutes, ordinances, judgments, decrees, injunctions, writs, decisions and orders of any Authorized Authority (to the extent the Person or property is subject to the jurisdiction of such Authorized Authority), (iii) agreements with Authorized Authorities and (iv) rules, regulations, policies and guidelines (in each case, having the force of law), directives, interpretations, licenses, exemptions, approvals and permits of or issued by any Authorized Authority, in each case applicable from time to time to such Person or property.

"AUC" means the Alberta Utilities Commission, or any Authorized Authority succeeding to the powers of such commission.

"Authorizations" means all authorizations, permits, decisions, judgments, directions, entitlements, licenses, orders, consents, approvals, exemptions, registrations, rulings, advance rulings and certificates whether now existing or hereafter issued or obtained or required to be issued or obtained and which are or may be given or issued by any Authorized Authority.

"Authorized Authority" means, in relation to any Person, transaction or event, any: (i) federal, provincial, state, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign; (ii) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government; (iii) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; or (iv) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including securities exchanges, in each case having jurisdiction over such Person, transaction or event.

“Board” or **“Board of Directors”** means the board of directors of the General Partner.

“Bankruptcy” or **“Bankrupt”** means with respect to any Person:

- (a) such Person files a voluntary petition in bankruptcy;
- (b) such Person files a petition, answer or other pleading seeking for such Person (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any bankruptcy or insolvency law, or (ii) the appointment of a custodian, trustee, receiver, liquidator, assignee, sequestrator (or other similar official) of such Person or of all or any substantial part of such Person’s properties;
- (c) such Person consents to, acquiesces in, or solicits the filing of a pleading, or the institution of a proceeding, of a type described in the foregoing paragraphs (a) and (b), including (i) by filing an answer or other pleading admitting or failing to contest the material allegations in such a petition that is filed, or in such proceedings that are instituted, against such Person, or (ii) by soliciting any other Person to file such a pleading or to institute such a proceeding against such Person;
- (d) such Person becomes the subject of an order for relief or is declared insolvent in any bankruptcy or insolvency proceedings;
- (e) such Person makes an assignment for the benefit of creditors;
- (f) except as required by law, such Person admits its inability to pay its debts generally as they become due;
- (g) such Person takes any action in furtherance of any action described in the foregoing paragraphs (a) through (f); or
- (h) against such Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any bankruptcy or insolvency law has been commenced and 120 Days have expired without dismissal thereof or with respect to which, without such Person’s consent or acquiescence, a custodian, trustee, receiver, liquidator, assignee, sequestrator (or other similar official) of such Person or of all or any substantial part of such Person’s properties has been appointed and 90 Days have expired without the appointment having been vacated or stayed, or 90 Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

“Business Day” means any day other than a Saturday, a Sunday or statutory holiday on which Canadian chartered banks in the Province of Alberta are closed.

“Capital Expense Projection” for any period of five Fiscal Years or such other period as the Parties require from time to time, means the projected capital expenses associated with the

Project Facilities that would be classified as capital expenditures in accordance with the applicable AUC classification.

“Capital Opportunity” means an opportunity to construct or acquire facilities in order to: (a) modify, improve, expand or increase the capacity of the Project Facilities, or any portion thereof; or (b) expand the scope of the Partnership beyond the Project Facilities.

“Category 1 Permits” means all permits, licenses, certificates, certificates of authorization, approvals, authorizations, consents, registrations and the like issued or granted by any Authorized Authority (other than the AUC) and relating to (i) the ownership of the Project Facilities, (ii) the Land Rights or (iii) access to the Lands.

“Category 2 Permits” means all permits, licenses, certificates, certificates of authorization, approvals, authorizations, consents, registrations and the like issued or granted by the AUC and relating to the Project Facilities.

“Category 3 Permits” means all permits, licenses, certificates, certificates of authorization, approvals, authorizations, consents, registrations and the like issued or granted by any Authorized Authority and required for performance of the Services, other than the Category 1 Permits and the Category 2 Permits, and includes all required work permits.

“Chartered Accountants” means a firm of independent chartered accountants selected from time to time by the Board.

“Claims” means, in relation to any Person, any and all past, present or future:

- (a) debts, costs, expenses, Liabilities, obligations, Losses, damages, dues, Taxes, security interests, fees, fines or penalties imposed on, incurred by, suffered by or asserted against such Person or to which it or its assets is or may be subject;
- (b) actions, suits, causes of action, claims, proceedings, hearings, investigations, charges, demands or complaints of whatsoever nature or kind, including regulatory or administrative, pending or threatened, against such Person or its assets;
- (c) accusations, allegations, notices of violation, demands, injunctions, prosecutions or mandatory communications issued, made or threatened to or against such Person or its assets, status or ability to carry on business by any Authorized Authority or other Person, regardless of the remedy or recourse sought thereby; and
- (d) judgments, orders, decrees, rulings, directions (conditional or otherwise) or other remedies issued or made against such Person or its assets,

which, in each of the foregoing cases, involves or relates to the Project or to the performance of this Agreement whether arising or based on common law or equity, on the basis of contract, liability in tort or strict or absolute liability, or arising out of or based on requirements of Applicable Laws or any other theory or basis of liability and whether absolute or contingent and, except as otherwise expressly provided herein, includes all out-of-pocket costs, disbursements, fees (including fees of legal counsel on a solicitor and his own client basis) and expenses paid or incurred by such Person in investigating, pursuing, defending or considering the defence of any of the foregoing or any proceeding relating to any of the foregoing.

“Code of Conduct” means the inter-affiliate code of conduct prepared in compliance with the AUC’s direction to establish standards and conditions for interaction between the Partnership and its Affiliates.

“Completion” or **“Completion Date”** means the date on which the Project Facilities are energized and placed in service through interconnection to Alberta’s interconnected electric system.

“Confidential Information” means information and data (including all copies thereof) that is furnished or submitted by any of the Limited Partners, their Affiliates, the General Partner or the Operator, whether oral, written, or electronic, on a confidential basis to the other Limited Partners, their Affiliates, the General Partner or the Operator in connection with the Facilities, and any and all of the activities and studies performed pursuant to the MOU or the Project Documents, and the resulting information and data obtained from those studies, including market evaluations, market proposals, service designs and pricing, transmission line system design and routing, cost estimating, rate studies, identification of permits, strategic plans, legal documents, environmental studies and requirements, public and governmental relations planning, identification of Canadian regulatory issues and development of related strategies, legal analysis and documentation, financial planning, studies of the electricity supplies for the Facilities, and other studies and activities to determine the potential viability of the Facilities. Notwithstanding the foregoing, the term **“Confidential Information”** shall not include any information that:

- (a) is in the public domain at the time of its disclosure or thereafter, other than as a result of a disclosure directly or indirectly by a Limited Partner or its Affiliates in contravention of the MOU or the Project Documents;
- (b) as to any Limited Partner, was in the possession of such Limited Partner or its Affiliates prior to the execution of the MOU; or
- (c) has been independently acquired or developed by a Limited Partner or its Affiliates without violating any of the obligations of such Limited Partner or its Affiliates under (i) the MOU or the Project Documents or (ii) to the knowledge of such Limited Partner and its Affiliates, any other confidentiality agreement or duty by which such Limited Partner, its Affiliates or the Partnership is bound.

“Control” or “Controlled” means one or more of the following:

- (a) a body corporate is controlled by a Person if: (A) securities of the body corporate to which are attached more than 50% percent of the votes that may be cast to elect directors of the body corporate are beneficially owned, directly or indirectly, by such Person; and (B) the votes attached to those securities are sufficient to elect a majority of the directors of the body corporate;
- (b) an association, partnership, trust or other organization is controlled by a Person if (A) more than 50% of the ownership interests, however designated, into which the association, partnership, trust or other organization is divided are beneficially owned, directly or indirectly, by such Person; and (B) the Person is able to direct the business and affairs of the association, partnership, trust or other organization;
- (c) a body corporate, association, partnership, trust or other organization is controlled by a Person if such Person has, directly or indirectly, control in fact of the body corporate, association, partnership, trust or other organization; or
- (d) a body corporate, association, partnership, trust or other organization that controls (within the meaning of this definition) another body corporate, association, partnership, trust or other organization is deemed to control (within the meaning of this definition) any body corporate, association, partnership, trust or other organization that is controlled or deemed to be controlled (within the meaning of this definition) by the other body corporate, association, partnership, trust or other organization.

“Day” means a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

“Default Rate” means a rate per annum equal to the lesser of : (a) a varying rate per annum equal to the sum of (i) the prime lending rate on Canadian dollar commercial loans made in Canada as published from time to time by the Royal Bank of Canada, with adjustments in that varying rate to be made on the same Day as any change in that rate is so published, plus (ii) five (5) % per annum; and (b) the maximum rate permitted by Applicable Law.

“Dispute” has the meaning ascribed to such term in Section 17.

“Disputing Party” has the meaning ascribed to such term in Section 17.

“Effective Date” means the date on which the Partnership Agreement is executed.

“Electric Operating Laws” means the Electric Utilities Act (Alberta), the Safety Codes Act (Alberta), the Canadian Electrical Code (CSA), the Alberta Electrical Communication and Utility Code, the Electricity and Gas Inspection Act (Canada), the Occupational Health and Safety Act (Alberta), the Hydro and Electric Energy Act (Alberta), as applicable, and any other applicable legislation, safety codes and safety standards.

“Encumber”, “Encumbering” or “Encumbrance” means the creation of a security interest, lien, pledge, mortgage or other encumbrance, whether such encumbrance be voluntary, involuntary or by operation of law.

“EPC Agreement” means the engineering, procurement and construction agreement to be entered into between the Partnership and the EPC Contractor in relation to the engineering, procurement and construction of the Project Facilities.

“EPC Contractor” means the contractor selected and appointed by the Partnership under the EPC Agreement.

“EPCOR Heartland” means EPCOR Transmission Development (Heartland) Limited Partnership, an initial Limited Partner of the Partnership.

“Facilities” includes (a) the Project Facilities and (b) other transmission facilities located within the Province of Alberta that are approved by the General Partner as Capital Opportunities and constructed or acquired by the Partnership in accordance with the Partnership Agreement.

“Fiscal Year” means the twelve month period commencing on January 1 of a given year and ending on December 31 of that year or any applicable stub period as may be required from time to time.

“Force Majeure” means an event, condition or circumstance that is beyond the control of the affected Party or of the directors, officers or other personnel of the affected Party or its Affiliates, and, as long as the foregoing qualifications are satisfied, includes:

- (a) an act of God, an act of public enemies or terrorists, acts of civil disobedience, including riots and blockades, or acts of war;
- (b) explosion, fire, landslide, subsidence, flood, earthquake or other natural disaster;
- (c) strikes or other industrial disturbances;
- (d) any restraint or action by a Authorized Authority after the date of this Agreement, including any act of expropriation, confiscation, compulsory acquisition or nationalization;
- (e) failure to obtain or to obtain a renewal of any Authorization that is necessary for the provisions of the services or operations as contemplated in this Agreement, but only if the affected Party exercised all due diligence and used all reasonable efforts to obtain same; and
- (f) breakage of or accident to machinery or other facilities or equipment, but only to the extent not caused by a failure to maintain in accordance with Good Industry Practice or ordinary wear and tear.

“GAAP” means, in relation to any Person at any time, accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants or its successor, applied on a basis consistent with the most recent audited financial statements of such Person and, if applicable, its consolidated subsidiaries (except for changes approved by the auditors of such Person).

“General Partner” means Heartland Transmission Management Ltd., a corporation formed to act as general partner of the Partnership, and any Person hereafter admitted to the Partnership as general partner pursuant to the provisions of the Partnership Agreement.

“Good Industry Practice” means any of the practices, methods and acts that, in the exercise of reasonable judgment in the light of the facts known, or that reasonably should be known, to the Party applicable at the time that a decision was made, could reasonably have been expected to accomplish the desired result in a cost-effective manner consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts employed by owners and operators of facilities similar in size and operational characteristics to the Project Facilities, including those involving the use of new concepts or technology, and having due regard for practices followed from time to time by the electric industry, applicable electrical, safety and maintenance codes and standards, manufacturers’ warranties, permits and all Applicable Law.

“Gross Negligence or Wilful Misconduct” means any act or failure to act (whether sole, joint or concurrent) by a Person that was intended to cause, or was in reckless disregard of, or with wanton indifference to, the harmful consequences to the safety or property of another Person or to the environment, which the Person acting or failing to act knew (or should have known) would result from such act or omission. However, Gross Negligence or Wilful Misconduct does not include any act or failure to act insofar as it: (i) constituted mere ordinary negligence; or (ii) was done or omitted in accordance with the express instructions or approval of all Partners, insofar as the act or failure to act otherwise constituting Gross Negligence or Wilful Misconduct was implicit in such instructions or approval.

“HEE Act” means the *Hydro and Electric Energy Act* (Alberta).

“Lands” means the lands upon which the Project Facilities are located from time to time.

“Land Rights” means any right, title, interest and estate of the Partnership in and to, and rights to use or have access to or over, the Lands as at the date hereof or acquired from time to time hereafter, whether or not an interest in land.

“Limited Partner” means each of AltaLink Heartland and EPCOR Heartland and **“Limited Partners”** means both of them and includes any Person hereafter admitted to the Partnership as a limited partner pursuant to the provisions of the Partnership Agreement.

“Maintenance Capital Costs”, for a Fiscal Year, means the costs incurred in connection with the repair or replacement of any of the Project Facilities and all other costs associated with the Project Facilities that would be classified as maintenance capital expenditures in accordance with the applicable AUC classification.

“Major Capital Costs” for a Fiscal Year, means: (a) Maintenance Capital Costs, which are not included in the Annual Operations and Maintenance Plan; and (b) maintenance capital expenditures incurred by the Operator in connection with the expansion or modification of the Project Facilities directly assigned to the Partnership by the AESO.

“MOU” means the March 23, 2007 memorandum of understanding between AltaLink, L.P. and EPCOR Distribution & Transmission Inc. which sets out their basic intentions in relation to the Project.

“Necessary Regulatory Approvals” means all Authorizations (all of which must be final and non–appealable) as may be required (but excluding Authorizations of a nature not customarily obtained prior to commencement of construction of transmission facilities) in connection with (a) the construction and operation of the Project Facilities or any Capital Opportunity (as applicable). In the case of the Project Facilities, the Necessary Regulatory Approvals will also include any Authorizations as may be required in connection with the formation of the Partnership. In the case of any Capital Opportunities, the Necessary Regulatory Approvals will include any required approval or order under the HEE Act from the AUC.

“OM&A Costs” has the meaning ascribed to such term in Section 7.

“O&M Services” has the meaning ascribed to such term in Section 6.2.

“Operating Manager” means the operating manager provided by Operator to the Corporation and approved by the Board.

“Operations & Maintenance Agreement” means this Agreement.

“Operator’s Representative” means the representative appointed by the Operator, upon notice to the Partnership, to be the principal contact for the Operator and who shall have the responsibility and authority as described in Section 8 and elsewhere in this Agreement.

“Partnership Act” means the *Partnership Act* (Alberta).

“Partnership Agreement” means the limited partnership agreement made effective March 7, 2008, among Heartland Transmission Management Ltd., as General Partner, and AltaLink Heartland and EPCOR Heartland, as initial Limited Partners.

“Partnership Interest” with respect to any Partner, means (i) that Partner’s status as a Partner; (ii) that Partner’s Units; (iii) all other rights, benefits and privileges enjoyed by that Partner (under the Partnership Act, the Partnership Agreement or otherwise) in its capacity as a Partner; and (iv) all obligations, duties and liabilities imposed on that Partner (under the Partnership Act, the Partnership Agreement or otherwise) in its capacity as a Partner, including any obligations to make Capital Contributions.

“Partnership’s Representative” means the representative appointed by the Partnership, upon notice to the Operator, to be the principal contact for the Partnership and who shall have the responsibility and authority as described in Section 8 and elsewhere in this Agreement.

“Partnership Revenue Requirement” for a Fiscal Year, means the amounts recoverable by the Partnership from the AESO in connection with the ownership and operation of the Project Facilities.

“Party” or **“Parties”** means the parties to this Agreement and **“Party”** means either of them.

“Permits” means the Category 1 Permits, the Category 2 Permits and the Category 3 Permits.

“Person” includes an individual, a general or limited partnership, a corporation, a trust, a joint venture, an incorporated or unincorporated organization or association, a sole proprietorship, a firm, an entity, a body corporate, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

“Personnel” means, with respect to any Party, such Party’s directors, officers, agents, employees, consultants and subconsultants and their employees, agents, contractors and subcontractors.

“Project” has the meaning set out in the first recital to this Agreement.

“Project Documents” means each of:

- (a) the Shareholders’ Agreement;
- (b) the Partnership Agreement;
- (c) the Operations & Maintenance Agreement;
- (d) any Services Agreement; and
- (e) any other contracts, licences and agreements entered into by or on behalf of any of the Parties solely for or in connection with the Project and which are required or deemed necessary from time to time to complete the Project.

“Project Facilities” has the meaning set out in the first recital to this Agreement.

“Qualified Utility Employee” has the meaning ascribed to such term in the Alberta Electrical Communication and Utility Code.

“Regulated Operating Expenses” for a Fiscal Year, means the net operating labour and general operating expenses incurred by the Operator in respect of the Project Facilities in such Fiscal Year, which costs shall not include depreciation, income tax, interest, annual tower payments and property taxes.

“Services” means the Administrative Services, the O&M Services and any other services provided by the Operator to the Partnership hereunder.

"Services Agreement" means a service agreement between the Partnership and either AltaLink, L.P. (or any of its Affiliates) or EPCOR Distribution & Transmission Inc. (or any of its Affiliates) in relation to the provision of the human resources and services required by the Partnership to conduct its business.

"Shareholders' Agreement" means the unanimous shareholders' agreement made effective March 6, 2008, among the General Partner and each of AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., as shareholders of the General Partner.

"Taxes" means all taxes, duties, fees, premiums, imposts, levies and other similar charges imposed by any Authorized Authority under Applicable Law, however denominated, including any interest, penalties, fines, additions to tax or other additional amounts that may become payable in respect thereof, imposed by any Authorized Authority, including income or profits taxes (including federal and provincial income taxes), capital taxes, goods and services taxes, harmonized taxes, withholding taxes, payroll and employer health insurance and taxes, employment insurance, social insurance and social security taxes, sales taxes, value-added taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, surtaxes, environmental taxes, education taxes, transfer taxes, workers' compensation, custom duties and import and export taxes, countervail and anti-dumping duties, licence, franchise and registration fees, Canada and any provincial government pension plan contributions or premiums and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing.

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

"Term" has the meaning ascribed in Section 2.

"TFO" means a transmission facility owner as defined in the Transmission Regulation 86/2007 (Alberta).

"Third Parties" means Persons other than the Parties (and their respective Affiliates), the Limited Partners (and their respective Affiliates) and the General Partner.

"TUC" means the lands designated for a Transportation/Utility Corridor pursuant to the *Edmonton Restricted Development Area Regulations* as set forth in Exhibit C to the Partnership Agreement.

"Unscheduled Maintenance" means any maintenance, repair or replacement of any of the Project Facilities where the costs of such maintenance, repair or replacement would constitute Major Capital Costs.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and *vice versa*;

- (b) reference to any Person includes any successor or assign of such Person that is permitted under this Agreement;
- (c) reference to a Person in a particular capacity excludes such Person in any other capacity;
- (d) reference to any gender includes all genders;
- (e) a grammatical variation of a defined term has a corresponding meaning;
- (f) reference to any agreement, document or instrument means such agreement, document or instrument as amended, restated or modified and in effect from time to time in accordance with the terms thereof;
- (g) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision;
- (h) references to an Article, Section, subsection, paragraph, Annex or Schedule by number or letter or both refer to this Agreement;
- (i) a reference to a paragraph also refers to the subsection in which it is contained and a reference to subsection refers to the Section in which it is contained
- (j) "Agreement", "this Agreement", "herein", "hereby", "hereunder", "hereof", "hereto" and words of similar import are references to the whole of this Agreement and not, unless a particular Section or other part thereof is referred to, to any particular Section or other part;
- (k) "including" means including without limiting the generality of any description preceding or succeeding such term and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned;
- (l) the phrases "the aggregate of", "the total of", "the sum of", or a similar phrase means "the aggregate (or total or sum), without duplication, of";
- (m) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding";
- (n) accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP;

- (o) unless otherwise stated, any reference to dollars means Canadian dollars;
- (p) payments and transfers of funds are to be made in immediately available funds;
- (q) a reference to time or date is a reference to the time or date in effect in Alberta, taking into account the *Daylight Saving Time Act* (Alberta);
- (r) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight; and
- (s) where any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a Business Day, that payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the next following Business Day.

1.3 Schedules

The following schedules (the "Schedules") are attached hereto and form a part of this Agreement:

Schedule "A" – Addresses for Notice and Representative Information

If any term or condition, express or implied, of any Schedule conflicts or is at variance with any term or condition in the body of this Agreement, such term or condition in the Schedule shall prevail. Except as otherwise provided herein or in any Schedule, the Parties may substitute revised Schedules to this Agreement at any time by agreeing to, signing and attaching a dated copy of the revised Schedule(s) to this Agreement, which revised Schedule(s) shall from that date be the governing Schedule(s).

1.4 Headings

The division of this Agreement and the recitals, table of contents and headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Rules of Construction

This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof or thereof.

2. TERM

The term of this Agreement (the "Term") shall commence on the Completion Date and shall continue until the Partnership is terminated or dissolved in accordance with the provisions of the Partnership Agreement, unless earlier terminated in accordance with the provisions of this Agreement.

3. TERMINATION

3.1 Termination

This Agreement may be terminated upon the occurrence of any one of the following events:

- (a) by mutual agreement of the Parties;
- (b) by either Party in the event that the Partnership Agreement and the Shareholders' Agreement are terminated in accordance with their provisions;
- (c) by either Party in the event that the Partnership ceases to own the Project Facilities by giving not less than thirty (30) Days' prior notice to the other Party of its intent to terminate this Agreement;
- (d) by the Partnership if the Operator is in material default of its obligations under this Agreement and such default(s) remain unremedied for a period of thirty (30) Days (or such longer cure period as may be approved by the Partnership, acting reasonably) after notice thereof (including reasonable particulars of the alleged default(s)) has been provided to the Operator by the Partnership;
- (e) by the Partnership if the Operator ceases to be an Affiliate of a Limited Partner of the Partnership provided that the Operator shall continue to provide the Services required under this Agreement, at the option of the Partnership, for up to twelve (12) months after the date upon which the Operator ceased to be an Affiliate of a Limited Partner; or
- (f) by either Party if the other Party is Bankrupt.

3.2 Effective Date of Termination

Subject to Sections 3.3 and 19.6 of this Agreement, upon expiry of the Term of this Agreement or upon any termination of this Agreement permitted hereunder, all rights and benefits and all liabilities and obligations conferred or imposed upon the Parties by this Agreement shall be terminated; provided the expiration or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiration or termination and shall not affect the continuing obligations of each of the Parties hereunder.

3.3 Change of Operator

In the event of any termination of the Operator pursuant to the terms of this Agreement, the Operator shall cooperate with the Partnership and shall use commercially reasonable efforts to transition all obligations under this Agreement to a new operator.

4. REPRESENTATIONS AND WARRANTIES

Each Party (the "Warrantor") represents and warrants to each other Party that as of the Effective Date each of the following statements are accurate, subject only, in the case of the Partnership, to the final approval of the Project by the respective boards of directors of the shareholders of the General Partner:

- (a) the Warrantor is duly formed and validly subsisting under the laws of its jurisdiction of formation;
- (b) the Warrantor has full corporate or partnership power and authority to enter into, perform and observe its obligations and duties under this Agreement;
- (c) the Warrantor's execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate or partnership action;
- (d) this Agreement is a valid and binding agreement of the Warrantor and is enforceable against it in accordance with its terms, subject to the exercise of judicial discretions inherent in the courts in Alberta and subject to general principles of equity and laws concerning insolvency;
- (e) the entering into of this Agreement by the Warrantor does not, and the transactions contemplated hereby will not:
 - (i) result in a breach of any Applicable Law or any provision of the constating documents of the Warrantor or any agreement to which it is a party; or
 - (ii) contravene any provision of, or be an event that is (or with the passage of time will result in) a contravention of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation of the Warrantor under any security interest, agreement, instrument, order, arbitration award, judgment, injunction or decree to which the Warrantor is a party or by which it is bound, or conflict with any statute, rule or regulation applicable to the Warrantor;
- (f) the Warrantor is not in violation of any Applicable Law, which violations, individually or in the aggregate, would have a material adverse effect upon the Warrantor's ability to perform its obligations hereunder; and
- (g) the Warrantor is not a party to any legal, administrative, arbitral, investigational or other proceeding or controversy pending, or, to the best of the Warrantor's knowledge, threatened, that would have a material adverse effect upon the Warrantor's ability to perform its obligations under this Agreement.

5. ENGAGEMENT

5.1 Engagement of the Operator

The Partnership hereby engages the Operator to provide the Services to the Partnership upon and subject to the terms and conditions of this Agreement, and the Operator accepts such engagement, until the dissolution of the Partnership, unless earlier terminated pursuant to Section 3 of this Agreement.

5.2 Liability of the Operator

Except in respect of any payments specifically stated in this Agreement to be its responsibility, the Operator shall not be liable to make payments on account of the Project Facilities out of its own funds.

5.3 No Joint Venture or Partnership

- (a) The Parties acknowledge and agree that this Agreement is a contract for services only and that the Partnership retains full responsibility for the ownership and operation of the Project Facilities. For the purposes of the fulfillment of its obligations under this Agreement, the Operator shall be or shall be deemed to be an agent of the Partnership; and
- (b) Subject to Section 5.3(a), no Party shall by virtue of this Agreement in any way or for any purpose be or be deemed to become a partner or agent of the other Party for the conduct of any business or otherwise be deemed or deemed to become a member of a joint venture or joint enterprise with any other Party.

6. SERVICES

6.1 Administrative Services

The Operator shall during the Term of this Agreement, subject to the overall control and direction of the Partnership, provide and perform for or on behalf of the Partnership or procure from its Affiliates or Third Parties all administrative services (the "Administrative Services") required by the Partnership from time to time in connection with the Partnership's operation of the Project Facilities, including, without limitation, the following:

- (a) provision of operating information including, without limitation, property data information;
- (b) providing information relating to the Project Facilities as required by the Partnership from time to time in connection with the Partnership's corporate reporting obligations and tax filings, including information related to the Project Facilities setting forth capital additions, transfers and retirements, itemized separately, and a reconciliation to the amounts set forth in the Annual Operating and Maintenance Plan;

- (c) provision of an annual statement setting forth annual tower payments, grants in lieu of taxes and other taxes, or any other payments that are to the account of the Partnership required in respect of the Project Facilities for the next following month, including the names of the persons entitled thereto and the payments dates;
- (d) subject to Section 6.2(d), advising on matters pertaining to capital expenditure related to the Project Facilities, including capital expenditures applied to expansion or improvement of the Project Facilities, including the preparation of authorizations for expenditure in respect of expenditures not included in the Annual Operating and Maintenance Plan;
- (e) provision of information and assistance required by the Partnership in connection with the Partnership's responsibilities as a TFO or as an entity owned by one or more TFOs;
- (f) negotiating and entering into, on behalf of the Partnership, contracts with third parties necessary for the proper operation of the Project Facilities;
- (g) providing, at the request of the Partnership, all reasonable assistance required by the Partnership in connection with the obtaining and maintenance of Category 1 or Category 2 Permits, as the case may be;
- (h) obtaining all necessary Category 3 Permits in connection with the provision of the Services, maintain all required permits and licensing in good standing and will provide annual verification to the Partnership upon written request;
- (i) making available, in performing its obligations hereunder, office space, equipment and personnel as may be reasonably necessary to perform its obligations hereunder;
- (j) provision of information and assistance required by the Partnership in connection with the defence and prosecution by the Partnership of litigation and other legal services and providing advice and recommendations with respect thereto;
- (k) for direct charge costs, keeping and maintaining at its office in Calgary, Alberta at all times books, records and accounts which shall contain particulars of operations, receipts and disbursements relating to the Project Facilities; and
- (l) generally providing such other services as may be reasonably required by the Partnership in respect of the Project Facilities in order to meet the terms and conditions imposed on the Partnership as a transmission facility owner.

6.2

O&M Services

- (a) The Operator shall, subject to the overall control and direction of the Partnership and to Section 11 and the terms and conditions of the Permits, perform with its own employees, employees of its Affiliates or contract with third parties all

operation and maintenance services (the "O&M Services") as may be necessary or advisable from time to time for the proper operation by the Partnership of the Project Facilities and pursuant to the Annual Operations and Maintenance Plan including, without limitation, the following:

- (i) in accordance with the limitation of an Annual Operations and Maintenance Plan, performing or causing to be performed all services, and making or causing to be made all repairs and replacements, necessary so that the Project Facilities shall be: (A) operated in accordance with Good Industry Practice; and (B) maintained in good operating condition, which services shall include, without limitation: providing required maintenance tools and spare parts; inspecting and repairing all portions of the Project Facilities that become defective, worn, damaged or incapable of operating as a result of normal and routine operations; and performing periodic maintenance in accordance with Good Industry Practice;
- (ii) subject to the provisions of Section 6.2(c), performing or causing to be performed all services and making or causing to be made all repairs and replacements of the Project Facilities as are required due to Unscheduled Maintenance. The Operator shall promptly notify the Partnership of the need for such Unscheduled Maintenance, and unless the Unscheduled Maintenance is an emergency, upon receiving authorization within thirty (30) Days from the Board of Directors to proceed, shall perform any such Unscheduled Maintenance in a timely and cost effective manner;
- (iii) in the event that, in the reasonable opinion of the Operator based upon information known to the Operator at the time, there exists an emergency condition affecting any of the Project Facilities or the operations thereof in any material manner, as soon as practicable after becoming aware of the same, the Operator shall: (A) report such condition to the Partnership; and (B) take such action as the Operator believes may be necessary to safeguard life, property or the environment or to prevent or minimize damage to, and any interruption in the operation of, the Project Facilities;
- (iv) performing all technical services required to fulfill the role of an operator of electrical transmission facilities in accordance with Good Industry Practice;
- (v) preparing, in accordance with Section 5.3 hereof, the Annual Operations and Maintenance Plan for the next Fiscal Year;
- (vi) reporting to the Partnership in a timely manner any: (A) material failure or reasonably anticipated material failure to operate and

maintain the Project Facilities in accordance with Good Industry Practice; (B) any actual or reasonably anticipated disruption in the operation of the Project Facilities; (C) any actual or reasonably anticipated labour disputes; (D) any actual or threatened litigation relative to the Project Facilities; and (E) any actual or reasonably anticipated lapse of, modification to or refusal to renew any Permit relating to the Project Facilities of which the Operator becomes aware; and

- (vii) maintaining appropriate records for, and, under the direction of the Partnership, preparing, presenting and prosecuting applications for all Category 3 Permits (or renewals thereof) required for the operating and maintenance of the Project Facilities.
- (b) In providing O&M Services under this Agreement, the Parties acknowledge and agree that the Operator will source and supply the equipment and inventory required from time to time by the Partnership and the cost of such equipment and inventory shall be included in the OM&A Costs (as defined herein) to be invoiced from time to time to the Partnership pursuant to Section 7 of this Agreement.
- (c) In providing the Services under this Agreement, except as provided in the Annual Operations and Maintenance Plan and as otherwise agreed by the Parties, the Operator shall not incur any single expenditure not contemplated in such plan without the Partnership's prior written authorization, other than to immediately resolve emergency conditions.
- (d) In making expenditures in excess of or not considered in the Annual Budget, with the exception of emergency expenditures, the Operator shall obtain prior approval from the Board.

6.3 Annual Operations and Maintenance Plan

- (a) The Operator shall prepare in advance for each Fiscal Year: (i) an Annual Operations and Maintenance Plan; and (ii) a Capital Expense Projection which it shall submit to the Partnership for approval at least one hundred and twenty (120) Days prior to the beginning of such Fiscal Year, such approval not to be unreasonably withheld. Notwithstanding the foregoing, the Partnership and the Operator agree that the Annual Operations and Maintenance Plan and Capital Expense Projection for the first Fiscal Year (or portion thereof) commencing on Completion of the Project Facilities shall be submitted to the Partnership for approval no less than one hundred and twenty (120) Days prior to the anticipated date of Completion of the Project Facilities. Upon approval by the Partnership, the Annual Operations and Maintenance Plan and the Capital Expense Projection shall be deemed to be incorporated in this Agreement by reference and shall be considered to form a part hereof as if it were appended as a schedule hereto;

- (b) the Partnership shall notify the Operator in writing, within thirty (30) Days of the submission thereof, whether it has approved the Annual Operations and Maintenance Plan for such Fiscal Year;
- (c) In the event that the Partnership shall refuse its approval of an Annual Operations and Maintenance Plan or any proposed amendment thereto, the Parties agree to negotiate in good faith, acting reasonably, to resolve any disagreement concerning the Annual Operations and Maintenance Plan provided that the Operator shall continue to perform the undisputed portion of the Annual Operations and Maintenance Plan notwithstanding the failure of the Partnership to approve the Annual Operations and Maintenance Plan.
- (d) In the event that the Operator desires to request an adjustment to an approved Annual Operations and Maintenance Plan at any time during a Fiscal Year, the Operator shall submit a revised Annual Operations and Maintenance Plan for the Partnership's consideration, including the basis for the adjustment, which proposal the Partnership shall approve or disapprove in writing within thirty (30) Days after submission thereof. If the revised Annual Operations and Maintenance Plan is disapproved within such thirty-day period, the Partnership shall furnish the Operator with the reasons for such disapproval in writing and shall immediately begin good faith discussions in an effort to reach a mutually agreeable revised Annual Operations and Maintenance Plan.

6.4 Regulatory Matters

- (a) The General Partner shall prepare, for each Fiscal Year, a forecast of the Partnership's Revenue Requirement which it shall submit to the Operator as required to enable the Operator to assist in meeting applicable AUC requirements, including timely preparation and filing of applications and other submissions. The forecast of the Partnership's Revenue Requirement for the first Fiscal Year shall be provided by the Partnership to the Operator as soon as practicable following execution of this Agreement and, in any event, not less than 180 days prior to the anticipated date of Completion of the Project Facilities.
- (b) The Partnership's Revenue Requirement for a given period shall be included in any TFO tariff or joint tariff application in respect of the Project Facilities for such period.

6.5 Notification by the Operator

The Operator covenants and agrees that it shall provide prompt notice to the Partnership of any material facts or information of which it is aware in relation to and which affect the Project Facilities, including without limitation any pending or threatened claims by or against the Partnership before any Authorized Authority and any violations in the management or operations of the Project Facilities of any Electric Operating Laws.

7. **PAYMENT, INVOICES AND INTEREST**

- (a) The Operator shall be reimbursed by the Partnership for the Services provided by the Operator in accordance with a cost schedule to be determined by the Partnership and the Operator. Upon approval by the Partnership, such cost schedule shall be deemed to be incorporated in this Agreement by reference and shall be considered to form a part hereof as if it were appended as a schedule hereto (the "OM&A Costs"). Subject to the provisions of any Authorization or order to the contrary, the OM&A Costs charged by the Operator shall be calculated strictly on a cost recovery basis in compliance with the Code of Conduct;
- (b) The Operator shall submit to the Partnership an invoice for OM&A Costs and all other expenses and charges payable by the Partnership pursuant to this Agreement within twenty (20) Business Days of the end of each calendar month during the Term of this Agreement with respect to the immediately preceding month. Payment of invoices shall be made by the Partnership within thirty (30) Days of receipt of such invoice;
- (c) If the Operator fails to deliver an invoice to the Partnership with respect to any OM&A Costs within one (1) year from the date the Operator is entitled to issue such invoice, the Operator's right to such costs shall be forfeited and the Partnership will have no further obligation for the payment of such costs;
- (d) No payment of any invoice shall prejudice either Party's right to question the correctness of any invoice submitted by the other Party provided that any such question is raised within twenty-four (24) months from the end of the calendar year of the date of such invoice;
- (e) If a Party disputes the invoice or payment owing to the other Party (the "Other Party") under this agreement, the Disputing Party shall be obliged to pay to the Other Party full amount owing until a contrary determination is made. Such disputes shall be settled in accordance with the provisions of Section 17 herein. If it is determined that the Disputing Party is entitled to reimbursement of any disputed amount, the Other Party shall forthwith pay the Disputing Party such amount, together with interest at the rate specified below, from the date such payment was originally made until the date such reimbursement is made;
- (f) A Party obligated to make a payment hereunder shall pay interest on any overdue payment at the Default Rate from the date such payment is due until payment is received by the Other Party; and
- (g) the Partnership agrees to pay goods and services taxes, value added taxes, and other similar taxes imposed by law with respect to the provision of the Services invoiced under this Agreement, but no Party shall be responsible for the other Party's income taxes.

- (h) If the AUC or other Authorized Authority determines that any OM&A Costs charged to the Partnership by Operator in connection with the Services were excessive or unjustified and not recoverable as part of the Tariff approved for the Partnership, the Partnership will be responsible for any such costs which are so disallowed by the AUC or other Authorized Authority. In the event any OM&A Costs are disallowed by the AUC or other Authorized Authority, the Partnership may direct the Operator, by notice in writing, to alter its practices and procedures in such a manner as to minimize the potential for any future disallowances.

8. REPRESENTATIVES

The titles of the individuals appointed as the Partnership's Representative and the Operator's Representative are set forth in Schedule "A" hereto. The responsibilities of the Partnership's Representative and the Operator's Representative appointed by the Partnership and the Operator, respectively, shall include, among other things:

- (a) administering the performance of the Partnership's and the Operator's obligations, as applicable, under this Agreement;
- (b) advising the General Partner of any adjustments required from time to time to the scope of the Services required or the OM&A Costs to be recovered by the Operator as a result of the inclusion of new transmission facilities in the Facilities; and
- (c) such other responsibilities to which the parties may mutually agree.

9. COVENANTS

9.1 Covenants of the Operator

The Operator covenants and agrees with the Partnership that:

- (a) all Services rendered by it pursuant to this Agreement will be provided in a timely, competent, workmanlike fashion, in accordance with: (i) Good Industry Practice, the applicable Permits and any applicable operating or maintenance procedures; and (ii) the same or better standard maintained by the Operator in respect of its own assets;
- (b) it will provide facilities and all equipment and inventory necessary to perform the Services and such facilities, equipment and inventory will be adequate to perform the Services; and
- (c) it will ensure that all Personnel engaged by the Operator to perform the Services will be adequately trained or otherwise qualified to perform the Services in accordance with this Agreement.

9.2 Covenants of the Partnership

The Partnership covenants and agrees with the Operator that:

- (a) the Partnership shall be responsible for obtaining all necessary Category 1 Permits and Category 2 Permits and shall ensure that the Operator has a true copy of the Permits that relate to the performance of the Services by the Operator;
- (b) the Partnership shall be responsible for negotiating and maintaining all arrangements relating to the Lands and the Lands Rights; and
- (c) the Partnership shall, at the request of the AUC or in the Partnership's sole discretion: (i) provide a representative of the Partnership to act as a witness in any AUC proceeding relating to the Partnership Revenue Requirement; or (ii) prepare and present directly before the AUC any and all matters relating to the Partnership Revenue Requirement.

10. ACCESS

- (a) During the Term, the Partnership shall provide or cause to be provided to the Operator and its duly trained and authorized personnel such access to the Project Facilities and the Lands as may be reasonably necessary for the proper performance of the Services.
- (b) The Operator shall, while accessing the Project Facilities and the Lands, abide by applicable environmental, health and safety requirements in effect from time to time and comply with all applicable Good Industry Practice and Applicable Law.

11. PERSONNEL

11.1 Responsibilities of Operator

In performing the Services contemplated by this Agreement, the Operator:

- (a) acknowledges that all Personnel supplied by it in connection with the Services shall be employees of the Operator, or Affiliates of the Operator, except as otherwise agreed to by the Parties pursuant to Section 11.2 herein;
- (b) acknowledges that with respect to its employees and subcontractors, that it is responsible for all aspects arising out of the relationship between it and each such employee or subcontractor, as the case may be, including, without limitation: the provision of supervision; responsibility for hiring, dismissal, discipline, direction and control of such employees; the payment of salary; and the withholding and remittance of taxes, pension plan contributions, employment insurance, health care, workers' compensation and any other premiums and amounts generally payable by such employer in respect of such employee or subcontractor, as the case may be;

- (c) shall employ at all times the quantity and quality of Personnel, including supervisory Personnel, necessary for the effective and efficient performance of the Services;
 - (d) shall at all times be responsible for the performance and payment of all Personnel in accordance with this Agreement;
 - (e) shall ensure that all Personnel involved in the provision of the Services:
 - (i) are trained and competent in performing the assigned work;
 - (ii) use reasonable care in performance of the Services;
- and to the extent required for the proper performance of the assigned work:
- (iii) are Qualified Utility Employees;
 - (iv) hold a journeyman or lineman or equivalent certificate; and
 - (v) have any other professional standing in accordance with industry standards;
- (f) agrees that if the Partnership, acting reasonably, determines, for any reason, that any Personnel is unqualified or otherwise unsatisfactory with respect to the performance of the Services, then upon written notice from the Partnership to the Operator, the Operator shall promptly remove such individual from the performance of the Services; and
- (g) shall provide the following information:
 - (i) evidence of qualifications for Personnel performing the Services; and
 - (ii) a list of the Personnel involved in the performance of the Services;

from time to time, upon the reasonable request of the Partnership.

11.2 Use of Subcontractors

The Operator may not use subcontractors to perform its material obligations pursuant to this Agreement unless the Operator has first obtained the Partnership's consent, which consent shall not be unreasonably withheld. The Operator may ask the Partnership to pre-approve a list of subcontractors for various duties, which, once approved, shall constitute the Partnership's consent unless and until the Partnership gives the Operator notice to the contrary. The use of subcontractors shall not relieve the Operator of any of its obligations and liabilities under this Agreement.

12. RECORDS AND REVIEW

12.1 Maintenance of Records by Operator and Partnership's Right of Review

- (a) The Operator shall maintain and preserve records, books and accounts pertaining to the performance of Services under this Agreement for a period of seven (7) years from the date of performance of such Services to the extent such records, books and accounts are required for tax purposes. Otherwise, Operator shall maintain such records, books and accounts for the Term. At the end of the Term, Operator shall surrender such records, books and accounts to the Partnership, provided that the Operator may retain copies thereof;
- (b) The Partnership shall have the right at any time during the Term, during the Operator's normal business hours, and upon at least five (5) Business Days prior written notice to the Operator, to examine records, books and accounts pertaining to the performance of Services under this Agreement, as may be reasonably necessary for the purposes of:
 - (i) meeting AUC requirements or the requirements of other Authorized Authorities;
 - (ii) ensuring the Services under this Agreement are being performed in accordance with this Agreement;
 - (iii) assessing equipment condition and conducting incident investigations; and
 - (iv) substantiating charges appearing on invoices rendered under this Agreement;
- (c) The Partnership's cost of review pursuant to this Section 12.1 will be borne by the Partnership, and if such review discloses an overcharge, Operator shall reimburse the Partnership the amount of such overcharge and in the event that the review discloses a deviation of ten (10%) percent overcharge or more in the accuracy of monthly invoices, Operator shall be responsible to reimburse the Partnership the actual cost of the review (or the applicable portion thereof to the extent that such review covers more than the subject matter described in clause (iv) of Section 12.1(b)).

12.2 Facilitation of Review by Operator

The Operator shall use its commercially reasonable efforts to provide the Partnership with information in sufficient quantity and quality so as to facilitate the review contemplated in Section 12.1. Neither Party shall unreasonably withhold information related to the Services, the performance thereof or payment therefore, if requested by the other Party for review.

13. INDEMNITY

13.1 Operator Indemnity

- (a) Notwithstanding any provision of this Agreement, the Operator, its Affiliates, and their respective directors, officers, employees, subcontractors, agents and representatives thereof (the "Operator Group") shall not be liable to the Partnership, its Affiliates, and their respective directors, officers, employees, subcontractors, agents or representatives (the "Partnership Group"):
- (i) for damage, losses, liabilities, costs or expenses ("Losses") suffered or incurred by any member of the Partnership Group; or
 - (ii) for Claims (including those which may be brought against any member of the Partnership Group by or in favour of a Third Party (including those Claims arising in favour of or brought by or on behalf of any the Partnership's employees, agents, contractors, subcontractors or representatives),

based upon, in connection with, relating to or arising out of the provision of the Services, except and to the extent that any such Losses or Claims are based upon, in connection with, relating to or arising out of the Gross Negligence or Wilful Misconduct of any member of the Operator Group.

- (b) To the extent that the actions or omissions of the Operator in performing its obligations hereunder constitute Gross Negligence or Wilful Misconduct, the Operator shall, subject to Section 13.3, be liable for such Losses and Claims and, in addition, shall indemnify and save harmless the Partnership Group from and against the same.

13.2 Partnership Indemnity

Except in respect of those Losses for which the Operator has assumed liability pursuant to Section 13.1 above, the Partnership shall, subject to Section 13.3, be responsible for and shall indemnify and save harmless the Operator Group from and against all Claims which may be brought by or in favour of any Third Party against or suffered or incurred by any member of the Operator Group, which is based upon, in connection with, relating to or arising out of the performance by the Operator of its obligations under this Agreement.

13.3 Limitation of Liability

Notwithstanding anything to the contrary contained in this Agreement, neither Party (the "First Party") will be liable to the other Party (the "Other Party") for any Loss or Claim of an indirect, special, consequential or punitive nature (including Claims resulting from loss of profit, loss of revenue, loss of business opportunity or loss of use) suffered by the Other Party which arises due to the First Party's failure to perform its obligations under this Agreement or for any other reason, whether or not such acts or omissions constitute Gross Negligence or Wilful Misconduct.

14. CONFIDENTIALITY

14.1 Treatment of Confidential Information

- (a) Except as permitted by Section 14.1(b), (i) each Party shall keep confidential all Confidential Information and shall not disclose any Confidential Information to any Person, including any of its Affiliates, and (ii) each Party shall use the Confidential Information only in connection with the Facilities.
- (b) Notwithstanding Section 14.1(a), but subject to the other provisions of this Section 14.1, a Party may make the following disclosures and uses of Confidential Information:
 - (i) disclosures to another Party, the Operator or to any Affiliate which has direct or indirect interest or function in connection with the Facilities;
 - (ii) disclosures and uses that are approved by the General Partner on behalf of the Partnership (which approval shall not be unreasonably withheld);
 - (iii) disclosures that may be required from time to time to obtain requisite Authorizations, Necessary Regulatory Approvals or financing for the Project Facilities or any proposed Capital Opportunity, if such disclosures are approved by the General Partner on behalf of the Partnership (which approval shall not be unreasonably withheld);
 - (iv) disclosures to an Affiliate of such Party on a "need to know" basis in connection with the Facilities, if such Affiliate abides by the terms of this Section 14.1;
 - (v) disclosures to a Person that is not a Party or an Affiliate of a Party, if such Person has been retained to provide services to the Partnership in connection with the Facilities and such Person has agreed to abide by the terms of this Section 14.1;
 - (vi) disclosures that a Party is legally compelled to make by deposition, examinations for discovery, interrogatory, request for documents, subpoena, civil investigative demand, order of a court of competent jurisdiction, or similar process; provided, however, that, prior to any such disclosure, such Party shall:
 - (A) provide the other Parties with prompt notice of such requirements so that one or more of the Parties may seek a protective order or other appropriate remedy or waive compliance with the terms of this Section 14.1(b)(vi);

- (B) consult with the General Partner acting on behalf of the Partnership on the advisability of taking steps to resist or narrow such disclosure; and
- (C) cooperate with the other Parties in any attempt one or more of them may make to obtain a protective order or other appropriate remedy or assurance that confidential treatment will be afforded the Confidential Information; and in the event such protective order or other remedy is not obtained, or the other Parties waive compliance with the provisions hereof, such Party agrees (I) to furnish only that portion of the Confidential Information that the other Parties are advised (by written opinion of counsel to the disclosing Party) is legally required and (II) to exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information;
 - (vii) disclosures to a Party's or Affiliate's lenders, consultants and legal and financial advisors; and
 - (viii) other disclosures that are required by Applicable Law (including applicable securities laws).
- (c) Each Party shall take such precautionary measures as may be required to ensure (and such Party shall be responsible for) compliance with this Section 14.1 by any of its Affiliates, and its and their directors, officers, employees and agents, and other Persons to which it may disclose Confidential Information in accordance with this Section 14.1.
- (d) The Parties agree that no adequate remedy at law exists for a breach or threatened breach of any of the provisions of this Section 14.1, the continuation of which unremedied will cause the Partnership to suffer irreparable harm. Accordingly, the Parties agree that the Partnership shall be entitled, in addition to other remedies that may be available to it, to immediate injunctive relief from any breach of any of the provisions of this Section 14.1 and to specific performance of their rights hereunder, as well as to any other remedies available at law or in equity.
- (e) The obligations of the Parties under this Section 14.1 (including the obligations of any former Operator) shall terminate on the second anniversary of the dissolution of the Partnership.

15. INSURANCE

The Operator shall, without limiting any of its obligations and liabilities under this Agreement, procure and maintain at its own expense, with respect to and for the Term, appropriate insurance covering its obligations under this Agreement. Specifically, the Operator shall maintain, at least, the following minimum insurance coverage:

- (a) Workers' Compensation, to the full extent required in the jurisdiction in which the Services are being performed and wherever the Operator's personnel contracts of employment are made or expressed to be made;
- (b) Automobile Liability Insurance covering all motor vehicles owned, leased or licensed by the Operator, covering bodily injury and property damage with a minimum limit of liability of Two Million (\$2,000,000) dollars for each accident;
- (c) Commercial General Liability Insurance with a personal injury and property damage combined single limit of no less than Five Million (\$5,000,000) dollars, inclusive;
- (d) with respect to this Agreement, the Operator policies of insurance, as aforesaid (the "Policies"), shall name the Partnership, each of the Limited Partners and their respective employees, officers, directors, agents and contractors, as additional insured;
- (e) the Policies shall contain a provision that the insurance thereunder shall be primary and shall not call into contribution any other insurance available to the Partnership;
- (f) the Policies shall provide that thirty (30) Days written notice shall be given to the Partnership prior to any material change adversely affecting the Operator, or cancellation of any Policy;
- (g) the Operator shall provide to the Partnership, evidence or renewal of all Policies, within thirty (30) Days following the date upon which the applicable Policy must be renewed;
- (h) the Operator will provide the Partnership with a certificate of insurance evidencing compliance with the provisions of this Section 15, within thirty (30) days of execution of this Agreement and thereafter, within five (5) days of a request to do so by the Partnership; and
- (i) the Operator will deliver to the Partnership, on the date of execution of this Agreement, its certificate number from the appropriate Workers' Compensation Board or Commission, showing that the Operator has registered and is in good standing with such Board or Commission.

16. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, if by reason of Force Majeure, either Party is wholly or partly unable to perform its obligations under this Agreement, it shall be relieved of those obligations to the extent, and for the period, that it is affected by Force Majeure provided that the affected Party gives the other Party prompt notice of such inability and the nature, cause and expected duration of the Force Majeure. The Party affected by Force Majeure shall use all reasonable efforts (and having regard to Good Industry Practice) to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of

its inability to perform, provided that there shall be no obligation on a Party so affected to settle labour disputes or to test or to refrain from testing the validity of any order, regulation or law in any court having jurisdiction. The Party affected by Force Majeure shall give prompt notice of cessation of the cause thereof.

17. DISPUTE RESOLUTION

17.1 Disputes

This Section 17 shall apply to any dispute arising under or related to this Agreement (whether arising in contract, tort or otherwise, and whether arising at law or in equity), including: (a) any dispute regarding the construction, interpretation, performance, validity or enforceability of any provision of this Agreement or whether any Person is in compliance with, or in breach of, any provisions of this Agreement; and (b) the applicability of this Section 17 to a particular dispute. Any dispute to which this Section 17 applies is referred to herein as a **"Dispute."** With respect to a particular Dispute, each Party that is a party to such Dispute is referred to herein as a **"Disputing Party."** The provisions of this Section 17 shall be the exclusive method of resolving Disputes and the Parties acknowledge and agree that the Operator shall not be relieved of its obligation to provide the Services regardless of the nature of any dispute(s) arising under this Agreement.

17.2 Negotiation to Resolve Disputes

If a Dispute arises, the Disputing Parties shall attempt to resolve such Dispute through the following procedure:

- (a) first, any Disputing Party shall prepare and issue a notice (the **"Dispute Notice"**) to all the Disputing Parties summarizing, in reasonable detail, the pertinent information relating to the Dispute;
- (b) second, within ten (10) Days of the receipt of the Dispute Notice during the construction phase of the Project Facilities and twenty (20) Days thereafter, a representative of each of the Disputing Parties shall promptly meet (whether by phone or in person) in a good faith attempt to resolve the Dispute;
- (c) third, if the Dispute remains unresolved after ten (10) Days following the commencement of the negotiations described in Section 17.2(b), then the chief executive officer or such other Person fulfilling the role of a chief executive officer or a similar role or office (or his designate) of each Disputing Party, shall meet (whether by phone or in person but within five (5) Days after the ten (10) Days referred to in this Section 17.2(c)) in a good faith attempt to resolve the Dispute; and
- (d) fourth, if the Dispute remains unresolved after ten (10) Days following the commencement of the negotiations described in Section 17.2(c), then any Disputing Party may submit such Dispute to binding arbitration under this Section 17 by notifying the other Disputing Parties (an **"Arbitration Notice"**).

17.3 Selection of Arbitrator

- (a) Any arbitration conducted under this Section 17 shall be heard by a sole arbitrator (the "Arbitrator") selected in accordance with this Section 17.3. Each Disputing Party and each proposed Arbitrator shall disclose to the other Disputing Parties any business, personal or other relationship or affiliation that may exist between such Disputing Party and such proposed Arbitrator, and any Disputing Partner may disapprove of such proposed Arbitrator on the basis of such relationship or affiliation.

- (b) The Disputing Party that submits a Dispute to arbitration shall designate a proposed Arbitrator in its Arbitration Notice. If any other Disputing Party objects to such proposed Arbitrator, it may, on or before the tenth Day following delivery of the Arbitration Notice, notify all of the other Disputing Parties of such objection. All of the Disputing Parties shall attempt to agree upon a mutually acceptable Arbitrator. If they are unable to do so within twenty (20) Days following delivery of the notice described above, any Disputing Party may apply to the Court of Queen's Bench of Alberta to appoint the Arbitrator having regard to the need to appoint an arbitrator that is suitably qualified to render an informed decision on the matter in dispute. If the Arbitrator so chosen shall die, resign or otherwise fail or becomes unable to serve as Arbitrator, a replacement Arbitrator shall be chosen in accordance with this Section 17.3.

17.4 Conduct of Arbitration

The Arbitrator shall expeditiously (and, if possible, within ninety (90) Days after the Arbitrator's selection) hear and decide all matters concerning the Dispute. Any arbitration hearing shall be held in the City of Calgary, Alberta. The arbitration shall be final and binding on the Disputing Parties and shall be conducted in accordance with the rules and procedures (including rules relating to the discovery process) (the "Arbitration Rules") determined and agreed to in advance by the Disputing Parties. Except as expressly provided to the contrary in this Agreement or in the Arbitration Rules, the Arbitrator shall have the power to: (i) gather such materials, information, testimony and evidence as it deems relevant to the Dispute (and each Party will provide such materials, information, testimony and evidence requested by the Arbitrator, except to the extent any information so requested is proprietary, subject to a third-party confidentiality restriction or is otherwise privileged); and (ii) grant injunctive relief and enforce specific performance. If it deems necessary, the Arbitrator may propose to the Disputing Parties that one or more other experts be retained to assist in resolving the Dispute. The retention of such other experts shall require the unanimous consent of the Disputing Parties, which shall not be unreasonably withheld. Each Disputing Party, the Arbitrator and any proposed expert shall disclose to the other Disputing Parties any business, personal or other relationship or affiliation that may exist between such Disputing Party (or the Arbitrator) and such proposed expert; and any Disputing Party may disapprove of such proposed expert on the basis of such relationship or affiliation. The decision of the Arbitrator (which shall be rendered in writing) shall be final, nonappealable and binding upon the Disputing Parties and may be enforced in any court of competent jurisdiction; provided that the Parties agree that the Arbitrator and any court enforcing the award of the Arbitrator shall not have the right or authority to award

punitive or exemplary damages to any Disputing Party. The responsibility for paying the costs and expenses of the arbitration, including the fees and expenses of the Arbitrator and any experts retained by the Arbitrator, shall be allocated among the Disputing Parties in a manner determined by the Arbitrator to be fair and reasonable under the circumstances. Each Disputing Party shall be responsible for the fees and expenses of its respective counsel, consultants and witnesses, unless the Arbitrator determines that compelling reasons exist for allocating all or a portion of such costs and expenses to one or more other Disputing Parties.

18. NOTICES

- 18.1 Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement ("Notices") must be in writing and must be delivered to the recipient in person, by courier or mail or by facsimile transmission.
- 18.2 Subject to Section 18.3 below, Notices given by personal or courier delivery are deemed received only on actual delivery. Notices given by facsimile transmission are deemed received only when successful transmission is confirmed to the sender.
- 18.3 Notices given by personal or courier delivery or by facsimile transmission on a day that is not a Business Day, or given after 4:30 pm on a Business Day, are deemed given at 9:00 am on the next following Business Day and deemed received in accordance with Section 18.2 above.
- 18.4 Notices given by mail must be given by first class registered mail, postage prepaid, and are deemed received at noon on the earlier of the actual date of receipt or the fourth (4th) Business Day following the mailing thereof. However, if postal service is, or is reasonably anticipated to be, interrupted or operating with unusual delay Notices shall not be served by such means during such interruption or period of delay.
- 18.5 All Notices to be sent to a Party must be sent to or made at the address given for that Party on Schedule A, or such other address as that Party may specify by Notice in writing to the other Parties. Whenever any Notice is required to be given by Applicable Law or this Agreement, a written waiver thereof, signed by the Party entitled to receive such Notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such Notice.

19. GENERAL PROVISIONS

19.1 Waiver

- (a) No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any further or other exercise thereof.

- (b) No waiver of any provision of this Agreement, including this Section, shall be effective otherwise than by an instrument in writing dated subsequent to the date hereof, executed by, or by duly authorized representatives of, the Party making such waiver.
- (c) No consent or waiver, express or implied, by a Party to or of any breach or default by another party in the performance of such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other party hereunder. Failure on the part of a Party to complain of any act or failure to act of another party or to declare another Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned party of its rights hereunder.

19.2 Amendments

This Agreement shall not be varied or amended in its terms by oral agreement or by representations or otherwise than by an instrument in writing dated subsequent to the date hereof, executed by, or by duly authorized representatives of, the Parties hereto.

19.3 Assignment

Except as expressly provided for in this Agreement, no Party may assign its rights hereunder without the prior written consent of the other Parties, which consent may be given or withheld in the absolute discretion of each Party.

19.4 Further Assurances

Each Party agrees that it will from time to time at the reasonable request of another Party execute and deliver such assignments, instruments and conveyances and take such further action as may be required to accomplish the purposes of this Agreement.

19.5 Enurement

Except as otherwise set forth herein, this Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

19.6 Surviving Provisions and Continued Rights

Sections 12, 13 and 14 of this Agreement contain continuing obligations of the Parties and shall remain in full force and effect after termination of this Agreement. Termination of this Agreement shall not affect any rights or liabilities of any Party that have accrued to it before the effective date of such termination.

19.7 Entire Agreement

This Agreement supersedes all prior negotiations, understandings and agreements and constitutes the entire agreement of the Parties relative to the subject-matter hereof and there

are no collateral or other statements, understandings, covenants, agreements, representations or warranties, written or oral, relative to the subject-matter hereof or which bear upon the meaning and effect of this Agreement other than as contained herein or in the documents specifically described herein.

19.8 No Joint Venture or Partnership

This Agreement does not constitute and will not be construed as constituting a partnership or joint venture between or among the Parties. Neither of the Parties will have any right to obligate or bind the other Party in any manner whatsoever except as expressly provided herein.

19.9 Breach

The Parties agree that in the event of a breach or apprehended breach of the terms or conditions of this Agreement, damages may be difficult or impossible to determine and that specific performance or injunction (mandatory or prohibitive), as appropriate, shall be available as remedies to any aggrieved party, in addition to any other remedies provided at law, in equity, by statute or otherwise; and each Party hereby waives the right to, and agrees that it shall not, assert or plead that a Party seeking to enforce this Agreement has an adequate remedy in damages or at law.

19.10 Time of Essence

Time is of the essence in this Agreement.

19.11 Applicable Law

This Agreement and the transactions contemplated by this Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta, including the federal laws of Canada applicable therein, excluding any conflicts of laws rules that might otherwise require the application of the laws of another jurisdiction.

19.12 Attornment

Except to the extent inconsistent with an express provision of this Agreement to submit matters to an alternative forum for dispute resolution, each Party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Alberta for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement; and
- (b) waives any right it has to object to an action being brought in those courts including claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

19.13 Invalidity of Provisions

If any of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

19.14 Third Party Rights

This Agreement is not intended to and does not create any rights in favour of any Person other than the Parties hereto who hold such rights for their own behalf and they have not indicated and will not indicate to the contrary to any Person.

19.15 No Indirect Breach

No Party shall permit any Affiliate to do any act it is prohibited from doing hereunder.

20. FACSIMILE AND COUNTERPARTS

This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**HEARTLAND TRANSMISSION, L.P.,
by its General Partner, Heartland
Transmission Management Ltd.**

**ALTALINK, L.P., by its General Partner,
AltaLink Management Ltd.**


Per: 

Authorized Signatory

Per: 

Authorized Signatory
SCOTT THON, P. ENG.
President &
Chief Executive Officer
AltaLink Management Ltd.

Per: _____
Authorized Signatory

Per: 

Authorized Signatory
Dennis M. Frehlich P. Eng.
EVP & Chief Operating Officer

SCHEDULE "A"
ADDRESSES FOR NOTICE AND REPRESENTATIVE INFORMATION

The Partnership's
Address for Notice: 2611 – 3rd Avenue S.E.
Calgary, Alberta
T2A 7W7

The Partnership's Representative: Each Limited Partner at its
address for notices as
provided pursuant to the
Partnership Agreement

The Operator's
Address for Notice: 2611 – 3rd Avenue S.E.
Calgary, Alberta
T2A 7W7

The Operator's Representative: George Bowden
Vice-President, Operations
and Maintenance