



AGREEMENT

IESO - OPGI Reliability Must-Run Agreement

**for Procurement of Physical Services
from Lennox Generating Station**

Between

ONTARIO POWER GENERATION INC.

and

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

October 1, 2007

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THIS AGREEMENT dated as of the 1st day of October, 2007

BETWEEN:

Ontario Power Generation Inc., a corporation duly incorporated and organized under the laws of the Province of Ontario, having its registered address and its principal place of business at 700 University Avenue, Toronto, Ontario, M5G 1X6 (the "*Physical Service Provider*")

- and -

Independent Electricity System Operator, a corporation established and continued under the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, as amended, having its registered address at Suite 410, 655 Bay Street, Toronto, Ontario, M5G 2K4 (the "*IESO*")

WHEREAS:

- A. The *market rules* for the Ontario Electricity Market (the "*market rules*") and the policies established by the *IESO* under those rules set out:
 - i. the rights, obligations and qualifications of *market participants* associated with the registration and testing of *registered facilities* to provide *physical services* into the *IESO-administered markets*;
 - ii. the rights and obligations of the *IESO* with respect to matters relating to the procurement of *physical services*; and
 - iii. the rights and obligations of *market participants* and the *IESO* with respect to the provision, monitoring and payment of *physical services*.
- B. In February 2007, the *Physical Service Provider* submitted to the *IESO* a request to de-register the four units comprising the *reliability must-run facilities*. Pursuant to the *market rules*, the *IESO* completed a technical assessment of the impact of the removal from service of the *reliability must-run facilities* on the *reliability* of the *IESO-controlled grid*, and concluded that the removal from service of any of the *reliability must-run facilities*' four units would or would be likely to have an unacceptable impact on the *reliability* of the *IESO-controlled grid*. Accordingly, the *IESO* commenced with the *Physical Service Provider* the process required to enter into a *reliability must-run contract* for the *reliability must-run facilities* in order to address *local area reliability* concerns.
- C. The *Parties* wish to enter into this *reliability must-run contract* in respect of the *reliability must-run facilities* in order to permit the *Physical Service Provider* to recover the fixed and variable costs associated with conserving the availability of those *facilities* and the fixed and variable costs associated with the production of electricity from those *facilities*, while ensuring that the *Physical Service Provider* continues to operate the *reliability must-run facilities* and participate in Ontario's electricity markets in a commercial, and commercially reasonable, manner, all on the terms and conditions set out herein.

NOW therefore, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the *Parties* agree as follows:

ARTICLE 1

INTERPRETATION

1.1 **Incorporation of Market Rules Definitions:** Subject to Section 1.2 of this *Agreement*, italicized expressions used in this *Agreement* have the meanings ascribed thereto in Chapter 11 of the *market rules*.

1.2 **Supplementary Definitions:** In this *Agreement*, the following italicized expressions shall have the meanings set out below unless the context otherwise requires:

"accrued true-up payment" has the meaning attributed to that term in subsection 6(b) of Schedule A;

"affiliate" has the meaning ascribed to that term in Section 1(2) of the *Securities Act* (Ontario);

"Agreement" means this *Agreement*, including the Schedules to this *Agreement*, as amended or supplemented from time to time, and the expressions "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this *Agreement* and not to any particular section or other portion of this *Agreement*;

"business day" means any day, other than a Saturday, Sunday, any statutory holiday in the Province of Ontario, or any day on which banking institutions in Toronto, Ontario are not open for the transaction of business;

"company representative" means the representative of a *Party* appointed by that *Party* for the purposes specified in Section 9.2 of this *Agreement*, as identified in Schedule C;

"Costs and Revenues Table" means Table 1 in Schedule D with respect to the estimated operating costs, *gross revenue*, *retained gross revenue amount* and *margin amount* associated with operating the *reliability must-run facilities* for the periods specified therein;

"default" means either a *financial default* or a *material non-financial default*;

"effective date" means October 1, 2007, which, subject to Section 9.17 of this *Agreement*, shall be the date of commencement of this *Agreement*;

"early termination payment" means a payment, if any, made by the *IESO* pursuant to Section 7.3 or 9.14.4 of this *Agreement* and in accordance with Section 5 of Schedule A;

"EFOR – OP" has the meaning attributed to that term in Section 1 of Schedule B;

"EFOR – OP target" has the meaning attributed to that term in Section 2 of Schedule B;

"financial default" means a failure by a *Party* to pay any amount under this *Agreement* to the other *Party* when due, including any amount payable as compensation or indemnification for any loss or damage suffered by a *Party* which amount has been agreed by the *Parties* or, if disputed, has been determined in accordance with the dispute resolution procedures contemplated herein, where such failure is not cured within 10 days of either becoming aware of such failure or receiving notice thereof under Section 9.14.2 of this *Agreement*;

"fuel costs" means the *Physical Service Provider's* fixed and variable fuel costs associated with operating the *reliability must-run facilities* through the term of this *Agreement*, all the elements of which are specified in the *Costs and Revenues Table*;

"future facility-related products" means all *related products* that relate to the *reliability must-run facilities* and that were not capable of being traded by the *Physical Service Provider* in the *IESO-administered markets* or other markets on or before the date of this *Agreement*;

"GAAP" means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian Institute of Chartered Accountants, consistently applied;

"good utility practices" means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the operation of generating *facilities* of similar type, size and capacity or any of the practices, methods, or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent *generator* in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and *applicable law*. *Good utility practices* are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the *reliability must-run facilities*, *good utility practices* include taking reasonable steps to ensure that:

- a. adequate materials, resources and supplies, including fuel, are available to meet the *facilities'* needs under reasonable conditions and reasonably anticipated abnormal conditions;
- b. sufficient operating personnel are available and are adequately experienced and trained to operate the *facilities* properly and efficiently and are capable of responding to abnormal conditions;
- c. routine and non-routine maintenance and repairs are performed on a basis that ensures reliable and safe operation and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures; and

- d. appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment shall function properly under both normal and abnormal conditions;

“governmental authority” means any domestic government, including any federal, provincial, municipal or local government, and any government agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, in each case having or purporting to have jurisdiction in the relevant circumstances;

“gross revenue” means the aggregate gross revenues earned by or attributed to the *Physical Service Provider* from or attributed to the *reliability must-run facilities*, as specified in the *Costs and Revenues Table*;

“IESO market costs” means the costs incurred by or attributed to the *Physical Service Provider* in the *IESO-administered markets* in respect of the *reliability must-run facilities* through the term of this *Agreement*, as specified in the *Costs and Revenues Table*;

“IESO market revenue” means the aggregate gross revenues earned by or attributed to the *Physical Service Provider* in a month from or attributed to the *reliability must-run facilities* in the *IESO-administered markets*, excluding any gross revenue earned by the *reliability must-run facilities* from the provision of reactive power;

“IESO’s audit rights” means the *IESO’s* rights set out in Section 4.4 of this *Agreement*;

“indemnitees” has the meaning ascribed to that term in Section 3.6 of this *Agreement*;

“insolvency event” means the occurrence of any one or more of the following events:

- a. the *Party* ceases or threatens to cease to carry on its business or a substantial part of its business as a *generator* or as an independent system operator, as the case may be, but in the case of a *generator*, does not include ceasing to generate electricity from coal, where such cessation has been approved by the relevant *governmental authorities*, or the sale of any generating station (other than the *reliability must-run facilities*) that has been approved by the relevant *governmental authorities*;
- b. the *Party* enters into or takes any action to enter into an arrangement, composition or compromise with, or an assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- c. the *Party* is, or states that it is, unable to pay from its own money its debts when they fall due for payment;
- d. a receiver or receiver and manager or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of any property of the *Party* which is used in or relevant to the performance by the *Party* of any of the

obligations imposed on a *Party* either as a provider of *physical services* with respect to the *reliability must-run facilities* or as an independent system operator, as the case may be, under the *market rules* or with respect to any of the *Party's* obligations under this *Agreement*;

- e. an administrator, liquidator, trustee in bankruptcy or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the *Party*, or any action is taken to appoint such person;
- f. an application is made for the winding up or dissolution of a *Party* or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of that *Party*;
- g. the *Party* is wound up or dissolved, unless the notice of winding up or dissolution is discharged; or
- h. a court determines that the *Party* is insolvent or unable to pay its debts;

"interim period" means each of the periods ending December 31, 2007, March 31, 2008, June 30, 2008 and September 30, 2008.

"interim true-up payment" means a payment, if any, made by either *Party* following the end of an *interim period* in accordance with Section 4 of Schedule A;

"interim true-up statement" means the statement prepared and delivered by the *Physical Service Provider* calculating in detail the *interim true-up payment* to be received by the relevant *Party* for an *interim period*, as specified in subsection 4(c)(i) of Schedule A;

"margin amount" has the meaning attributed to that term in Section 3 of Schedule D;

"material non-financial default" means:

- a. a breach of a term or condition of this *Agreement*, excluding a *financial default*, by a *Party* which results in, has or is reasonably expected to have, a material adverse effect on the non-defaulting *Party's* ability to obtain and enjoy the primary rights and benefits under this *Agreement*, including, without limitation, in the case of the *Physical Service Provider*, a breach of Section 3.3; or
- b. in the case of the *Physical Service Provider*, it transfers all or substantially all of the *reliability must-run facilities* to another person unless, at the time of such transfer, there has been a permitted and valid assignment of this *Agreement* by the *Physical Service Provider* under this *Agreement* to the transferee person and such person has assumed all of the *Physical Service Provider's* obligations under this *Agreement*; where such breach or transfer is not cured within 30 days of either becoming aware of such breach or transfer or receiving notice thereof under Section 9.14.2;

"monthly accrued true-up payment" has the meaning attributed to that term in subsection 6(d) of Schedule A;

"monthly payment" means the payment calculated as the total of each of the *operating cost amount* plus the *margin amount*, minus the total *retained gross revenue amount*, divided by twelve (12), payable by the *IESO* to the *Physical Service Provider* in accordance with Schedule A and Section 8 of this *Agreement*;

"monthly true-up payment" means a payment, if any, made by either *Party* following the end of a month in accordance with Section 3 of Schedule A;

"monthly true-up statement" means the statement prepared and delivered by each *Party* calculating in detail the relevant matters subject to true-up on a monthly basis and forming the basis for the *monthly true-up payment*, as specified in subsection 3(c)(i) of Schedule A;

"net penalty/reward" means the total net *penalty* or *reward* payable pursuant to, and as further specified in, Section 3 of Schedule B;

"net penalty/reward statement" means the statement prepared and delivered by the *IESO* calculating in detail the *net penalty/reward* to be received by the relevant *Party*, as specified in subsection 4(a) of Schedule B;

"non-IESO market revenue" means the aggregate gross revenues earned by or attributed to the *Physical Service Provider* in respect of the *reliability must-run facilities*, other than *IESO market revenue* earned through the term of this *Agreement*;

"OM&A costs" means the *Physical Service Provider's* costs, associated with the operation, maintenance and administration of the *reliability must-run facilities* through the term of this *Agreement*, as specified in the *Costs and Revenues Table*;

"operating cost amount" means the total estimated operating costs (O) represented in the *Costs and Revenues Table*, and as further described in Section 1 of Schedule D;

"other costs" means the *Physical Service Provider's* costs, other than *fuel costs*, *OM&A costs*, or *IESO market costs*, associated with operating the *reliability must-run facilities* through the term of this *Agreement*, as specified in the *Costs and Revenues Table*;

"Party" means a party to this *Agreement* and **"Parties"** means every *Party*;

"penalty" means the penalty, if any, to which the *Physical Service Provider* is subject pursuant to the performance standards of Schedule B, calculated with reference to *performance points* in accordance with Section 3 of that schedule;

"performance point" has the meaning attributed to that term in Section 3 of Schedule B;

"related products" means any products related to the rated, continuous load-carrying capability of the *reliability must-run facilities* to generate and deliver *energy* at a given time, *ancillary services*, and any other products or services that may be provided by the *reliability must-run facilities* from time to time, that may be traded in the *IESO-administered markets* or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market exists as of the date of this *Agreement*, such as *capacity reserves*;

"reliability must-run facilities" means the *Physical Service Provider's* Lennox generating station comprised of units G1, G2, G3 and G4 and related facilities located at 7263 Highway 33, R.R. 1, Bath, Ontario, K0H 1G0;

"representatives" means a *Party's* lawyers, accountants, auditors, consultants or other advisors;

"retained gross revenue amount" has the meaning attributed to that term in Section 2 of Schedule D;

"reward" means the reward, if any, to which the *Physical Service Provider* is entitled pursuant to the performance standards of Schedule B, calculated with reference to *performance points* in accordance with Section 3 of that schedule;

"termination costs" means the actual out-of-pocket costs, if any, incurred or to be incurred by the *Physical Service Provider* which directly relate to this *Agreement* and for which the *Physical Service Provider* is contractually committed and which, acting commercially reasonably, cannot be avoided or mitigated and which have been initiated prior to notice of any termination of this *Agreement* by the *IESO* pursuant to Section 7.3 of this *Agreement* or as a result of the *IESO's default* pursuant to Section 9.14.4 of this *Agreement*, but excluding, for greater certainty, any costs relating to the de-registration and removal from service of the *reliability must-run facilities* or any decommissioning costs relating thereto; and

"termination costs statement" means the statement prepared and delivered by the *Physical Service Provider* calculating in detail the *termination costs* to be received by the *Physical Service Provider*, as specified in subsection 5(b)(i) of Schedule A.

1.3 **Interpretation:** In this *Agreement*, unless the context otherwise requires:

1.3.1 words importing the singular include the plural and vice versa;

1.3.2 words importing a gender include any gender;

1.3.3 when italicized, other parts of speech and grammatical forms of a word or phrase defined in this *Agreement* have a corresponding meaning;

- 1.3.4 the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic;
 - 1.3.5 a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this *Agreement*;
 - 1.3.6 a reference to any statute, regulation, proclamation, order-in-council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders-in-council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing any of them and a reference to a statute includes all regulations, proclamations, orders-in-council, rules and by-laws of a legislative nature issued under that statute;
 - 1.3.7 a reference to a document or provision of a document, including this *Agreement* and the *market rules* or a provision of this *Agreement* or the *market rules*, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
 - 1.3.8 a reference to a person includes that person’s heirs, executors, administrators, successors and permitted assigns;
 - 1.3.9 a reference to sections of this *Agreement* or of the *market rules* separated by the word “to” (i.e., “Sections 1.1 to 1.4”) shall be a reference to the sections inclusively; and
 - 1.3.10 the expression “including” means including without limitation, the expression “includes” means includes without limitation and the expression “included” means included without limitation.
- 1.4 **Headings:** The division of this *Agreement* into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this *Agreement*, nor shall they be construed as indicating that all of the provisions of this *Agreement* relating to any particular topic are to be found in any particular article, section, subsection, clause, provision, part or schedule.

ARTICLE 2

MARKET RULES

- 2.1 **Market Rules Govern:** The interpretation of this *Agreement* shall be purposive and liberal so as to avoid to the extent reasonably possible findings of inconsistency between this *Agreement* and the *market rules*. In the event of any inconsistency between this *Agreement* and the *market rules*, the *market rules* shall prevail to the extent of the inconsistency. Notwithstanding the foregoing, italicized expressions defined in this *Agreement* shall prevail over any equivalent italicized expressions defined in the *market rules*.

ARTICLE 3

RIGHTS AND OBLIGATIONS IN RELATION TO THE *PHYSICAL SERVICE PROVIDER*

- 3.1 **Compliance with Market Rules and Applicable Law:** The *Physical Service Provider* hereby agrees to be bound by and to comply with all of the provisions of the *market rules*, so far as they are applicable to the *Physical Service Provider* and this *Agreement*, in the same manner as if such provisions formed part of this *Agreement*. Without limiting the generality of the foregoing, the *Physical Service Provider*:

- i. acknowledges and agrees that the *IESO* shall have the ability to call on the *reliability must-run facilities* in accordance with Chapter 7, Section 9 of the *market rules*; and
- ii. shall comply with Chapter 5, Sections 3.6 and 4.8 of the *market rules*.

The *Physical Service Provider* further hereby agrees to be bound by and to comply, in all material respects with, all *applicable law* required to perform or comply with its obligations under this *Agreement*.

- 3.2 **Ownership and Operation of Facilities:** Subject to Section 9.4 of this *Agreement*, the *Physical Service Provider* agrees to own the *reliability must-run facilities* during the term of this *Agreement* and to operate and maintain the *facilities* during the term using *good utility practices* and meeting all requirements of *applicable law*.
- 3.3 **Participation in Markets:** Without limiting the terms of the *market rules* and the *Physical Service Provider's* electricity generation licence with the Ontario Energy Board, the *Physical Service Provider* shall participate in the *IESO-administered markets* and in other electricity markets with respect to the *reliability must-run facilities*, including making *offers* in the *energy market* and the *operating reserve market* and participating in any *IESO-administered market* or any other market that develops in *future facility-related products*, in a commercially reasonable manner and in accordance with the *Physical Service Provider's* mandate, including in accordance with the provisions of Schedule A. For greater certainty, acting in a "commercially reasonable manner" with respect to any given activity includes,

other than in exceptional circumstances, that the *Physical Service Provider* will offer a unit economically over a sustained period of time based on its costs.

- 3.4 **Insurance:** The *Physical Service Provider* shall maintain all necessary and appropriate insurance that a prudent person in the business of the *Physical Service Provider* operating the *reliability must-run facilities* would maintain in respect of such *facilities*.
- 3.5 **Permits, Licences and Authorizations:** The *Physical Service Provider* shall at all times hold and maintain in good standing all permits, *licences* and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations to provide *physical services* with respect to the *reliability must-run facilities* as described in the *market rules* and in this *Agreement*, including maintaining its electricity generation *licence* with the *Ontario Energy Board*.
- 3.6 **Assumption of Risk:** The *Physical Service Provider* agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the *IESO* and its *affiliates*, and each of the foregoing persons' respective directors, officers, employees, shareholders, advisors and agents (including contractors and their employees) (collectively, the "*indemnitees*"), in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the *reliability must-run facilities* and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, or the *Dangerous Goods Transportation Act* (Ontario), or other similar legislation whether federal or provincial, except to the degree that such discharge shall have been due to the negligence of the *indemnitees*.
- 3.7 **Information:** The *Physical Service Provider* shall promptly disclose or provide to the *IESO* such information as is required to be disclosed or provided to the *IESO* pursuant to this *Agreement*. Information disclosed or provided by the *Physical Service Provider* shall be, to the best of the *Physical Service Provider's* knowledge, true, correct and complete at the time at which such disclosure or provision is made, acting reasonably. Where the *Physical Service Provider* discovers that any such information that is material and has been previously disclosed or provided by it to the *IESO* was or, in the *Physical Service Provider's* opinion, is reasonably likely to become, materially untrue, incorrect, or incomplete, the *Physical Service Provider* shall as soon as reasonably practicable in the circumstances rectify the situation and disclose or provide the true, correct, or complete information to the *IESO*.
- 3.8 **Notification of Significant Events:** The *Physical Service Provider* shall, as soon as reasonably practicable in the circumstances, notify the *IESO* of the occurrence of, or upon becoming aware of any circumstances that may give rise to, any of the following events during the term of this *Agreement*:
- 3.8.1 if it becomes unlawful for the *Physical Service Provider* to comply with any of the obligations imposed on it under the *market rules* or with any of the *Physical Service Provider's* obligations under this *Agreement*;

3.8.2 a *licence*, permit or other authorization referred to in Section 3.5 of this *Agreement* is suspended, revoked, materially and adversely amended or otherwise ceases to be in full force and effect;

3.8.3 if the *Physical Service Provider* experiences an *insolvency event*;

3.8.4 if the *Physical Service Provider* ceases, or threatens or intends to cease, to carry on its business or a substantial part of its business of either owning or operating the *reliability must-run facilities*;

3.8.5 any new projects not already specifically identified to the *IESO*, and any increase in the costs of existing projects, for the *reliability must-run facilities*, in excess of:

i. \$500,000 individually; or

ii. \$2,000,000 in the aggregate.

Any such notice shall provide reasonable detail regarding the reasons for and components of any increased costs in existing projects or any new projects, as the case may be, and shall be prepared by the *Physical Service Provider* in good faith and, to the best of the *Physical Service Provider's* information, knowledge and belief, shall be accurate and complete;

3.8.6 the development by the *Physical Service Provider* of any *future facility-related product* in any *IESO-administered market* or other market; and

3.8.7 any other event in respect of the *Physical Service Provider* that is likely to materially affect the performance by the *Physical Service Provider* of its obligations under the *market rules* or this *Agreement* in relation to the provision of *physical services* from the *reliability must-run facilities*.

3.9 **Performance Standards:** Nothing in this *Agreement* shall require the *Physical Service Provider* to operate the *reliability must-run facilities* during an *outage*, or where to do so would endanger the safety of any person, damage equipment, harm the environment or violate any *applicable law*. Subject to the foregoing, the *Physical Service Provider* shall use commercially reasonable efforts in accordance with *good utility practices* to provide the *physical services* from the *reliability must-run facilities* according to the performance standards described in Schedule B, including operating any of the generating units comprising the *reliability must-run facilities* in accordance with Schedule B.

3.10 **Record Retention and IESO Audits:** The *Physical Service Provider* shall keep complete and accurate books, records and all other data required by it for the purpose of proper administration of, and compliance with, this *Agreement*. All such books, records and data shall be maintained as required by *applicable law* but for no less than for three (3) years after the creation of the book, record or data. The *Physical Service Provider*, on a confidential basis as provided for in Article 6, shall provide reasonable access to the *IESO*, any auditor appointed by the *IESO* pursuant to Section 4.4 of this *Agreement* and any of the *IESO's*

representatives, to such books, records and data kept and shall provide any assistance the *IESO* or any such auditor may reasonably require in order to conduct audits pursuant to Section 4.4.

- 3.11 **GAAP Reporting:** The *Physical Service Provider* shall prepare all *monthly true-up statements* and *interim true-up statements* and any *termination costs statement* in accordance with the terms of this *Agreement*, using revenues and costs prepared in accordance with *GAAP* and such statements shall fairly reflect the terms of this *Agreement* and the financial position and results of operation of the *reliability must-run facilities* for the periods set out therein.

ARTICLE 4

RIGHTS AND OBLIGATIONS IN RELATION TO THE *IESO*

- 4.1 **Compliance with *Market Rules* and *Applicable Law*:** The *IESO* hereby agrees to be bound by and to comply with all of the provisions of the *market rules* so far as they are applicable to the *IESO* in the same manner as if such provisions formed part of this *Agreement*, and to be bound by and to comply, in all material respects with, all *applicable law* required to perform or comply with its obligations under this *Agreement*.
- 4.2 **Information:** The *IESO* shall promptly disclose or provide to the *Physical Service Provider* such information as is required to be disclosed or provided to the *Physical Service Provider* pursuant to this *Agreement*. Information disclosed or provided by the *IESO* shall be, to the best of the *IESO*'s knowledge, true, correct and complete at the time at which such disclosure or provision is made, acting reasonably. Where the *IESO* discovers that any such information that is material and has been previously disclosed or provided by it to the *Physical Service Provider* was or, in the *IESO*'s opinion, is reasonably likely to become, materially untrue, incorrect, or incomplete, the *IESO* shall as soon as reasonably practicable in the circumstances rectify the situation and disclose or provide the true, correct or complete information to the *Physical Service Provider*.
- 4.3 **Notification of Significant Events:** The *IESO* shall, as soon as reasonably practicable in the circumstances, notify the *Physical Service Provider* of the occurrence of, or upon becoming aware of any circumstances that may give rise to, any of the following events during the term of this *Agreement*:
- 4.3.1 if it becomes unlawful for the *IESO* to comply with any of the obligations imposed on the *IESO* under the *market rules* or with any of the *IESO*'s obligations under this *Agreement*;
- 4.3.2 a *licence*, permit or other authorization that is necessary to enable the *IESO* to carry on its business as an independent system operator and perform its obligations under

this *Agreement*, is suspended, revoked, materially and adversely amended or otherwise ceases to be in full force and effect;

4.3.3 if the *IESO* experiences an *insolvency event*; and

4.3.4 any other event that is likely to materially affect the performance by the *IESO* of its obligations under the *market rules* or this *Agreement* including, without limiting the generality of the foregoing, proposed changes to the *market rules* which are likely to have a material effect on the *Physical Service Provider's* rights and obligations relating to the provision of *physical services* from the *reliability must-run facilities* under this *Agreement*.

4.4 Audits:

4.4.1 The *IESO*, at its own cost, shall have the right, acting reasonably, to initiate one or more audits during normal business hours and upon reasonable notice, at any time during the term of this *Agreement* and within a period of four months from the expiration or termination of this *Agreement*, of the books, records, data, procedures and operations of the *Physical Service Provider* in order to verify compliance by the *Physical Service Provider* with its obligations under this *Agreement*, including verification of its billings and costs specified in Schedules A and D, its compliance with Schedule B, and verification of any other information provided pursuant to this *Agreement*.

4.4.2 Any such audit shall be conducted at the *IESO's* own expense and shall be conducted by a third party appointed by the *IESO* unless the *Physical Service Provider*, acting reasonably, consents to the conduct of an audit by the *IESO*. If the *IESO* conducts the audit itself, it may use its own employees for purposes of any such audit provided that those employees are bound by the confidentiality requirements provided for in Article 6. For greater certainty, any third party auditor appointed by the *IESO* to conduct an audit and any *IESO* employee involved in conducting an audit shall have the right to discuss and share information only with respect to the *reliability must-run facilities* with or within the *IESO*, as the case may be, concerning an audit, subject in all cases to the confidentiality requirements provided for in Article 6 and the confidentiality and non-disclosure agreement executed by the auditor pursuant to Section 4.5 of this *Agreement*.

4.4.3 If the *Physical Service Provider* has a confidentiality obligation to a third party with respect to any of its books, records, data, procedures or operations that are relevant to the conduct of an audit pursuant to this *Agreement*, and the *Physical Service Provider* is unable, using commercially reasonable efforts, to obtain consent to the release thereof to a third party auditor, the *IESO* or its *representatives*, the *Physical Service Provider* shall provide a certificate executed by a nationally recognized, independent auditing firm attesting to the accuracy and completeness of such books, records, data, procedures or operations, and any information reflected therein as may be reasonably requested by the *IESO*.

- 4.4.4 The *IESO* or the third party appointed to conduct any audit shall provide to the *Physical Service Provider* the terms of reference of the audit plan and audit procedures at least ten (10) *business days* prior to the commencement of the audit in order to assist the *Parties* in planning the audit. The *IESO* acknowledges and agrees that the *Physical Service Provider's* readiness for an audit shall be dependent in part on the scope of the audit, and that, notwithstanding its commercially reasonable efforts, the *Physical Service Provider* may not be fully prepared to assist in the conduct of an audit at the end of such ten (10) *business days*. Notwithstanding the foregoing, the *Physical Service Provider* shall be so prepared as soon as is reasonably possible in the circumstances.
- 4.5 **Audit Confidentiality:** Any auditor appointed by the *IESO* pursuant to Section 4.4 of this *Agreement* shall enter into a Confidentiality Agreement with the *Physical Service Provider* substantially in the form of Schedule E.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

- 5.1 **Representations and Warranties of the *IESO*:** The *IESO* hereby represents and warrants that:
- 5.1.1 the *IESO* is a corporation established and continued under the *Electricity Act, 1998* (Ontario), is qualified to carry on its business in the Province of Ontario, and has the requisite power to enter into this *Agreement* and to perform its obligations hereunder;
- 5.1.2 the execution, delivery and performance of this *Agreement* by it has been duly authorized by all necessary corporate and/or governmental action;
- 5.1.3 this *Agreement* constitutes a legal and binding obligation of the *IESO*, enforceable against the *IESO* in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and
- 5.1.4 the *IESO* has reviewed this *Agreement* to ensure its consistency with and full compliance with the provisions of the *IESO's licence* and the *market rules* and, to the best of the *IESO's* knowledge, this *Agreement* is consistent with and in full compliance with the provisions of the *IESO's licence* and the *market rules*.
- 5.2 **Representations and Warranties of the *Physical Service Provider*:** The *Physical Service Provider* hereby represents and warrants that:

- 5.2.1 the *Physical Service Provider* is a corporation incorporated under the laws of the Province of Ontario, is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this *Agreement* and to perform its obligations hereunder;
- 5.2.2 the execution, delivery and performance of this *Agreement* by it has been duly authorized by all necessary corporate and/or governmental action;
- 5.2.3 this *Agreement* constitutes a legal and binding obligation of the *Physical Service Provider*, enforceable against the *Physical Service Provider* in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and
- 5.2.4 the information provided by the *Physical Service Provider* and set out in Schedule D with respect to its costs and revenues to operate the *reliability must-run facilities*:
 - 5.2.4.1.1 has been prepared by the *Physical Service Provider* in accordance with *GAAP* and in good faith and, to the best of its knowledge, information and belief after reasonable due diligence and inquiry, represents an accurate and complete estimate of such costs and revenues as at the date of this *Agreement*;
 - 5.2.4.1.2 represents costs that are consistent with the operation of the *reliability must-run facilities* in accordance with *good utility practices*, acting in a commercially reasonable manner; and
 - 5.2.4.1.3 represents costs that are, to the best of its knowledge, information and belief after reasonable due diligence and inquiry, consistent with the historical operating costs of the *reliability must-run facilities*, subject in all cases to commercially reasonable changes to such costs in accordance with *good utility practices* and to the true-up adjustment provisions of Sections 3 and 4 of Schedule A.

ARTICLE 6

CONFIDENTIALITY

- 6.1 **Market Rules Confidentiality Obligations:** Each *Party* shall keep confidential any *confidential information* pertaining to the other *Party* in accordance with the provisions of the *market rules*. The *Parties* agree that *confidential information* does not constitute “relevant terms and conditions of the contracts” within the meaning of Chapter 7, Section 9.8.1.4 of the *market rules*.

6.2 **Additional Confidentiality Obligations:** In addition to the confidentiality provisions of the *market rules* the following provisions shall also apply to any *confidential information*. *Confidential information* shall include all analyses, compilations, forecasts, studies or other documents prepared by a receiving *Party* which contain *confidential information*. The *Party* receiving the *confidential information* shall:

- 6.2.1 not make any copies or reproductions of the *confidential information* in any medium or form other than as reasonably necessary to carry out the terms of this *Agreement*;
- 6.2.2 only disclose the *confidential information* to such of its *representatives* or employees who need to know the *confidential information* to carry out the terms of this *Agreement*. The receiving *Party* specifically acknowledges that it shall be solely responsible to ensure that its *representatives* and employees are bound by the terms of this *Agreement* and the receiving *Party* shall defend, indemnify and hold harmless the disclosing *Party* from and against all suits, actions, damages, claims and costs arising out of any breach of this *Agreement* by such *representatives* and employees;
- 6.2.3 upon the expiration or other termination of this *Agreement*, and subject to the survival rights contained in Section 7.5 of this *Agreement*, at the request of the disclosing *Party*, return or destroy all *confidential information* disclosed or otherwise obtained in writing or in any medium or form, including copies or reproductions thereof, and destroy all analyses, compilations, forecasts, studies or other documents prepared by the receiving *Party* which contain *confidential information*, including all copies or reproductions thereof, and certify to the disclosing *Party* that it has done so;
- 6.2.4 if it is legally compelled to disclose any *confidential information*, it shall provide the disclosing *Party* with prompt notice so that the disclosing *Party* may seek injunctive relief or other appropriate remedies and/or waive compliance with the provisions of this *Agreement*. Furthermore, the receiving *Party* shall use reasonable efforts to assist the disclosing *Party* to contest and resist such disclosure, request, requirement or order. If the *Parties* are unable to prevent the further transmission of the *confidential information*, the receiving *Party* shall use reasonable efforts to obtain assurances that confidential treatment will be afforded to that portion of the *confidential information* furnished; and
- 6.2.5 not dispute that the disclosing *Party* would be irreparably injured by a breach of Article 6 of this *Agreement* and would be entitled to equitable relief, including injunctive relief and specific performance as may be granted by any court of competent jurisdiction to prevent breaches of Article 6 and to enforce specifically the terms and provisions hereof in any action instituted in any court having jurisdiction.

The provisions of this Section 6.2 shall apply to any *representatives* who receive *confidential information* pursuant to Section 4.4 or 4.5 of this *Agreement*.

ARTICLE 7

TERM AND TERMINATION

- 7.1 **Term:** This *Agreement* comes into force as of the *effective date* and shall remain in full force and effect until the earlier of:
- a. one year after the *effective date*; and
 - b. termination of this *Agreement* under Section 7.3, 7.4 or 9.14.
- 7.2 **No Right to Extend or Renew:** Neither *Party* shall have any right to extend or renew the term of this *Agreement*.
- 7.3 **Termination by IESO:**
- 7.3.1 The *IESO* may terminate this *Agreement* at any time upon written notice to the *Physical Service Provider* specifying the effective date of termination. To the extent reasonably possible, the *IESO* shall provide prior written notice of such termination to the *Physical Service Provider*.
 - 7.3.2 In the event of such termination, the *IESO* shall reimburse the *Physical Service Provider* for its *termination costs*, provided that the *Physical Service Provider* has provided to the *IESO*, acting reasonably, satisfactory written evidence of the costs so incurred.
 - 7.3.3 In the event and as of the date of such termination, the *Physical Service Provider's* request to de-register the *reliability must-run facilities* shall be deemed to have been approved by the *IESO*, and the *IESO* shall be considered not to have required a technical assessment of such request and to have concluded that the removal from service of the *reliability must-run facilities* would not or would not be likely to have an unacceptable impact on the *reliability* of the *IESO-controlled grid*, all in accordance with Chapter 7, Section 2.4.3 of the *market rules*. For greater certainty, if the *Physical Service Provider* wishes to de-register the *reliability must-run facilities* upon any such termination, it shall be required to provide notice to the *IESO* in accordance with such Section 2.4.3 and to comply with all other obligations under the *market rules* in order to effect such de-registration.
- 7.4 **Termination by Physical Service Provider:** The *Physical Service Provider* may terminate this *Agreement* at any time by withdrawing its request to de-register the *reliability must-run facilities* by written notice to the *IESO*. The *Physical Service Provider* shall be considered to have terminated this *Agreement* as of the date of such withdrawal. To the extent reasonably possible, the *Physical Service Provider* shall provide prior written notice of such withdrawal and termination to the *IESO*. In the event of such termination, the *Physical Service Provider* shall be entitled to, or obligated to make, all payments accruing to the date of such

termination, including for greater certainty any true-up payments pursuant to Schedule A, but shall not be entitled to be reimbursed for its *termination costs*. Notwithstanding the foregoing, if the *Physical Service Provider* terminates this *Agreement* prior to its expiry and if the cumulative total *operating cost amount* actually paid by the *IESO* exceeds the cumulative total of the *retained gross revenue amount* actually retained by the *IESO* for the time period from the *effective date* to the date of termination (adjusted for any applicable true-up payments), then the *Physical Service Provider* shall pay the difference between the two totals to the *IESO* in accordance with Section 8.1 of this *Agreement*.

7.5 Survival: The provisions of:

- 7.5.1 Sections 3.6, 3.10, 4.4, 4.5, Article 6, Sections 8.4, 9.1 and 9.13 shall survive the expiration of the term or any other termination of this *Agreement*;
- 7.5.2 Sections 3, 4 and 5 of Schedule A and Schedule B shall survive the expiration of the term or any other termination of this *Agreement* until such time as any payments required to be made pursuant to those sections have been made; and
- 7.5.3 Article 5 shall survive the expiration of the term or any other termination of this *Agreement* for a period of one (1) year following such expiration or termination.

Termination or expiration of all or part of this *Agreement* for any reason does not affect any rights of either *Party* against the other which:

- a. arose prior to or at the time at which such termination or expiration occurred; or
- b. otherwise relate to or may arise at any future time from any breach or non-observance of an obligation under this *Agreement* occurring prior to the termination or expiration.

These rights shall survive the expiration of the term or earlier termination of this *Agreement* for a period of time equal to the applicable statute of limitation.

ARTICLE 8

PAYMENT

- 8.1 **Payments:** Each *Party* shall make all payments required to be made to the other *Party* in accordance with this *Agreement*, the *IESO* Settlement Schedule and Payments Calendar and Chapter 9 of the *market rules*.

- 8.2 **Frequency of Payment:** The *IESO* shall pay the *monthly payments* on a monthly basis. All other payments to be made pursuant to this *Agreement*, including *monthly true-up payments*, *interim true-up payments*, *early termination payments* and *net penalty/reward payments*, shall be paid by the applicable *Party* in accordance with the timing specified in Schedule A or Schedule B, as applicable.
- 8.3 **Taxes:** Each of the *IESO* and the *Physical Service Provider* is liable for and shall pay, or cause to be paid, or reimburse the other *Party* if that other *Party* has paid, all taxes applicable on any payment due to the other *Party* other than on its income or capital. Any goods and services tax exigible pursuant to the Excise Tax Act (Canada) or Ontario provincial sales tax exigible under the Retail Sales Tax Act (Ontario) payable in connection with such payments shall be paid by the payor.
- 8.4 **Payment Records:** The *Parties* shall keep all books, records and data necessary to support the information contained in and with respect to each payment made hereunder.

ARTICLE 9

MISCELLANEOUS

- 9.1 **Dispute Resolution:** Except as otherwise provided in Schedule A, any dispute that arises under this *Agreement* shall be dealt with in accordance with the provisions of Chapter 3, Section 2 of the *market rules* and any applicable *licence* issued by the *OEB*.
- 9.2 **Company Representative:** Each *company representative* shall be duly authorized to act on behalf of the *Party* that has made the appointment, and with whom the other *Party* may consult at all reasonable times, and whose instructions, requests and decisions, provided the same are in writing signed by the *company representative*, shall be binding on the appointing *Party* as to all matters pertaining to this *Agreement*. The *company representatives* shall not have the power or authority to amend this *Agreement*.
- 9.3 **Amendment:** No amendment of this *Agreement* shall be effective unless made in writing and signed by the *Parties*.
- 9.4 **Assignment:** This *Agreement* may not be assigned, whether absolutely, in whole or in part, by a *Party* without the prior written consent of the other *Party*, such consent not to be unreasonably withheld or delayed. Upon any such assignment, the assigning *Party* shall be relieved of any further obligations under this *Agreement*.
- 9.5 **Successors and Assigns:** This *Agreement* shall enure to the benefit of, and be binding on, the *Parties* and their respective heirs, administrators, executors, successors and permitted assigns.

- 9.6 **Further Assurances:** Each *Party* shall promptly do such further acts and execute and deliver or cause to be done, executed and delivered all further acts and documents in connection with this *Agreement* that the other *Party* may reasonably require for the purposes of giving effect to this *Agreement*.
- 9.7 **Waiver:** A waiver of any *default*, breach or non-compliance under this *Agreement* is not effective unless in writing and signed by the non-defaulting *Party*. No waiver shall be inferred or implied by any failure to act or by the delay in acting by a non-defaulting *Party* in respect of any *default*, breach or non-observance or by anything done or omitted to be done by the defaulting *Party*. The waiver by a *Party* of any *default*, breach or non-compliance under this *Agreement* shall not operate as a waiver of that *Party*'s rights under this *Agreement* in respect of any continuing or subsequent *default*, breach or non-observance (whether of the same or any other nature).
- 9.8 **Severability:** Any provision of this *Agreement* that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this *Agreement*, all without affecting the validity or enforceability of the remaining provisions of this *Agreement* or affecting the validity or enforceability of such provision in any other jurisdiction.
- 9.9 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this *Agreement* shall be given or made in the manner set forth in Chapter 1, Section 8 of the *market rules*. Either *Party* may change its address and *company representative* as set forth in Schedule C by written notice to the other *Party* given in accordance with this Section 9.9. Such change shall not constitute an amendment to this *Agreement* for the purposes of the application of Section 9.3 of this *Agreement*.
- 9.10 **Governing Law:** This *Agreement* shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.11 **Counterparts:** This *Agreement* may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other electronically-communicated form and the *Parties* adopt any signatures received by a receiving facsimile machine or otherwise received electronically as original signatures of the *Parties*; provided, however, that any *Party* providing its signature in such manner shall promptly forward to the other *Party* an original signed copy of this *Agreement* which was so faxed or electronically delivered.
- 9.12 **Third Party – Beneficiaries:** In connection with this *Agreement*, the *Parties* shall be acting on their own behalf and shall benefit from the limitations of liability and other provisions of this *Agreement*. The *Parties* shall not be acting as agent, fiduciary or trustee for any other person or legal entity, and accordingly it is the *Parties*' intention that no person or legal entity other than the *Parties* hereto shall have any rights or remedies under or the ability to enforce this *Agreement* in any manner, directly or indirectly. The *Parties* further agree that the foregoing provisions shall not act as a waiver of subrogation by the *Parties*' insurers.

9.13 **Liability, Indemnification and Force Majeure:** The *Parties* acknowledge and agree that Chapter 1, Section 13 of the *market rules* applies to this *Agreement*.

9.14 **Default:** If an *insolvency event* occurs in relation to a *Party* or, in the case of the *Physical Service Provider*, it provides notice to the *IESO* pursuant to Section 3.8.4 of this *Agreement*, then the other *Party* may terminate this *Agreement* at any time by notice to that first *Party*. If the other *Party* gives a termination notice under this clause, then this *Agreement* terminates from the start of the later of the day following the day on which the notice was given and the day nominated in the notice.

9.14.1 **Notice by *Party* in Breach:** If a *Party* becomes aware that a circumstance has arisen which that *Party* reasonably considers constitutes or is likely to constitute or result in a *default* by it (for greater certainty, without reference to the applicable cure period), the *Party* must:

- a. immediately after becoming aware of the circumstances, give the other *Party* notice of that circumstance; and
- b. keep the other *Party* informed both at reasonable intervals and upon request by the other *Party*, as soon as practicable following the receipt of that request, of:
 - i. the first *Party*'s estimate of the likely duration of the *default*;
 - ii. the cessation of that *default* or the successful mitigation or minimization of the effects of that *default*; and
 - iii. any other matter which the other *Party* may reasonably request in connection with the occurrence of the *default* and the matters referred to in paragraphs (b)(i) and (ii).

9.14.2 **Notice by *Party* not in Breach:** If a *Party* becomes aware that a circumstance has arisen which that *Party* reasonably considers constitutes or is likely to constitute or result in a *default* by the other *Party* (for greater certainty, without reference to the applicable cure period), then the first *Party* may give the other *Party* notice of that circumstance. Upon receipt of that notice, the other *Party* must keep the first *Party* informed in accordance with clause 9.14.1(b).

9.14.3 **Cure of Default:** Upon receiving notice under clause 9.14.2 or otherwise becoming aware that a circumstance has arisen which constitutes or is likely to constitute or result in a *default* by it (for greater certainty, without reference to the applicable cure period), a *Party* must cure the *default* or prevent the *default* from occurring (as the case requires) and mitigate any loss the other *Party* suffers or is likely to suffer.

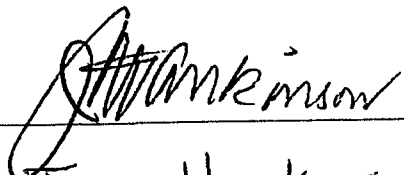
9.14.4 **Remedies:** If the defaulting *Party* does not cure a pending *default* within the applicable cure period such that a *default* has occurred, then the non-defaulting *Party* may terminate this *Agreement* by giving a further written notice to the defaulting

Party which notice shall specify the effective date of termination, and the defaulting *Party* shall forfeit any payment otherwise payable to that *Party* after the termination date, including any *true-up payment*, as liquidated damages and not as a penalty. If such termination occurs as a result of the *IESO's default*, the *IESO* shall reimburse the *Physical Service Provider* for its *termination costs*.

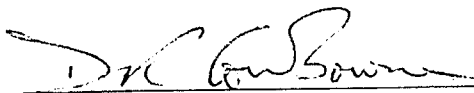
- 9.15 **Entire Agreement:** This *Agreement* constitutes the entire agreement between the *Parties* with respect to the matters contemplated by this *Agreement* and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the *Parties*.
- 9.16 **Publication or Announcement of Schedules to Agreement:** Subject, where applicable, to Article 6, except to the extent otherwise required by *applicable law* or as directed by any *governmental authority* or with the prior written consent of the other *Party*, neither *Party* shall publish in any medium, or make any public announcement concerning the substance of, the Schedules to this *Agreement*.
- 9.17 **OEB Approval:** The *Parties* agree that notwithstanding the proposed *effective date*, this *Agreement* shall not be implemented and no rights or obligations shall accrue hereunder until this *Agreement* is approved by the *Ontario Energy Board*. Notwithstanding anything else in this *Agreement*, if this *Agreement* is approved by the *Ontario Energy Board* after October 1, 2007, the *IESO* shall pay to the *Physical Service Provider* any *monthly payments* accrued and payable hereunder since October 1, 2007, at the same time the *IESO* pays the next applicable *monthly payment* following such approval, and any such accrued and payable *monthly payments* shall be subsequently *true-up* pursuant to Section 6 of Schedule A.
- 9.18 **Schedules:** The following schedules are attached and shall form part of this *Agreement*:
- Schedule A – Costs and Payments
 - Schedule B – Performance Standards
 - Schedule C – *Company Representatives* for Notifications
 - Schedule D – Operating Cost, *Gross Revenue* and *Margin Amounts* and Calculation of *Monthly Payments*
 - Schedule E – Form of Confidentiality Agreement

IN WITNESS WHEREOF the *Parties* have, by their duly appointed *representatives*, executed this Agreement.

ONTARIO POWER GENERATION INC.

By: 
Name: Jim Hankinson
Title: President + CEO
Date: Aug. 2/07

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: 
Name: Derek R. Cowbourne
Title: Chief Operating Officer
Date: 2007 07 23

SCHEDULE A

COSTS AND PAYMENTS

1. Additional Market Participation Provisions

In addition to the *Physical Service Provider's* obligations set out in Section 3.3 of this *Agreement*, the *Physical Service Provider* shall, in respect of the *reliability must-run facilities*:

- a. offer the maximum available amount of each category of *energy, operating reserve* and, as applicable, any *future facility-related products* in the *IESO-administered markets*, consistent with *good utility practices*;
- b. participate in markets other than the *IESO-administered markets* for *future facility-related products* consistent with *good utility practices* and acting commercially reasonably; and
- c. make each such *facility* available if that *facility* is physically capable of responding to *dispatch instructions*, consistent with *good utility practices*.

2. Monthly Payments

During the term of the *Agreement*, the *IESO* shall make twelve (12) equal *monthly payments* to the *Physical Service Provider*, plus all applicable taxes payable thereon, subject to the *IESO's audit rights*. The *IESO* shall make *monthly payments* in accordance with Article 8 of this *Agreement* and with the schedule and process for *physical markets settlements invoices* set out in the Settlement Schedule and Payments Calendar.

3. Monthly True-up Payments

- a. Following the end of each month during the term of the *Agreement*, and upon any early termination of the *Agreement*, either *Party* shall pay to the other *Party* a *monthly true-up payment* in accordance with this Section 3 of Schedule A.
- b. The *monthly true-up payment* shall be calculated as the sum of the following:
 - i. the estimated *fuel costs* for the then completed month being the amount specified in the *Costs and Revenues Table* divided by 12 minus the actual *fuel costs* incurred by the *Physical Service Provider* for that month (or the proportionate parts of each such amount if the *Agreement* is terminated prior to the expiration of a month); plus

- ii. the actual *retained gross revenue amount* minus the estimated *retained gross revenue amount* for the then completed month being the amount specified in the *Costs and Revenues Table* divided by 12 (or the proportionate parts of each such amount if the *Agreement* is terminated prior to the expiration of a month); plus
- iii. the estimated *IESO market costs* for the then completed month being the amount specified in the *Costs and Revenues Table* divided by 12 minus the actual *IESO market costs* incurred by the *Physical Service Provider* for that month (or the proportionate parts of each such amount if the *Agreement* is terminated prior to the expiration of a month).

If the *monthly true-up payment* amount is negative, the *IESO* shall pay to the *Physical Service Provider* an amount equal to the *monthly true-up payment* amount in accordance with Section 8.1 of this *Agreement* (subject, however, to the provisions of subsection 3(c) below). If the *monthly true-up payment* amount is positive, the *Physical Service Provider* shall pay to the *IESO* an amount equal to the *monthly true-up payment* amount in accordance with Section 8.1 of this *Agreement* (subject, however, to the provisions of subsection 3(c) below).

- c. The procedure for the calculation and payment of the *monthly true-up payment* shall be as follows, and shall in all cases be subject to the *IESO's audit rights*:
 - i. Within four (4) *business days* of the date upon which the *Physical Service Provider* receives its *final settlement statement* from the *IESO* for the then completed month, each of the *Physical Service Provider* and the *IESO* shall prepare and deliver to the other *Party* a *monthly true-up statement* calculating in detail, in the case of the *Physical Service Provider*, the true-up contemplated by subsection 3(b)(i) and any *non-IESO market revenue* for that month and, in the case of the *IESO*, all *IESO market revenue* for that month. Each *Party* shall provide to the other *Party* any applicable detailed statements, in the case of the *Physical Service Provider* validated by a senior manager of the *Physical Service Provider*, and all calculations and values used to determine or which support the calculation of the amounts specified in their respective *monthly true-up statements*, and any other evidence reasonably requested by the other *Party* in support of such amounts.
 - ii. Each *Party* shall, within three (3) *business days* of receipt of the other *Party's* *monthly true-up statement*, promptly review such statement, and, to the extent either *Party* disputes any matter with respect to such statement, the *Parties* agree that they shall make good faith efforts to negotiate and amicably resolve any such dispute.
 - iii. Using the undisputed amounts from each *Party's* *monthly true-up statement*, the *IESO* shall then calculate the undisputed portion, if any, of the *monthly true-up payment* to be received by the relevant *Party* and shall include such amount for that month in the *Physical Service Provider's* *invoice* and *settlement statements* for the subsequent month, and such amount, if any, shall be paid by the *IESO* or the *Physical Service Provider*, as the case may be, in accordance with Section 8.1 of this *Agreement*.
 - iv. Any dispute specified in, but not resolved pursuant to, subsection 3(c)(ii) shall be resolved in accordance with the provisions of Chapter 9 of the *market rules*. Upon the

final determination of such dispute, any amount determined to be owing pursuant to such resolution shall be included in the next available *invoice* and *settlement statements* to the *Physical Service Provider* following such resolution, and such amount shall be paid by the *IESO* or the *Physical Service Provider*, as the case may be, in accordance with Section 8.1 of this *Agreement*.

4. *Interim True-up Payments*

- a. Following the end of each *interim period*, and upon any early termination of the *Agreement*, either *Party* shall pay to the other *Party* an *interim true-up payment* in accordance with this Section 4 of Schedule A.
- b. The *interim true-up payment* shall be calculated as the estimated *OM&A costs* and *other costs* for the then ended *interim period* as specified in the *Costs and Revenues Table* minus the actual *OM&A costs* and *other costs* incurred by the *Physical Service Provider* for that *interim period* (or the proportionate parts of each such amount if the *Agreement* is terminated prior to the expiration of a *interim period*). If the *interim true-up payment* amount is negative, the *IESO* shall pay to the *Physical Service Provider* an amount equal to the *interim true-up payment* amount in accordance with Section 8.1 of this *Agreement* (subject, however, to the provisions of subsection 4(c) below). If the *interim true-up payment* amount is positive, the *Physical Service Provider* shall pay to the *IESO* an amount equal to the *interim true-up payment* amount in accordance with Section 8.1 of this *Agreement* (subject, however, to the provisions of subsection 4(c) below).
- c. The procedure for the calculation and payment of the *interim true-up payment* shall be as follows, and shall in all cases be subject to the *IESO's audit rights*:
 - i. Within four (4) *business days* of the date upon which the *Physical Service Provider* receives its *final settlement statement* from the *IESO* for the month at the end of the then completed *interim period*, the *Physical Service Provider* shall prepare and deliver to the *IESO* an *interim true-up statement*, and shall provide to the *IESO* any applicable detailed statements validated by a senior manager of the *Physical Service Provider*, and all calculations and values used to determine or which support the calculation of the *interim true-up payment*, and any other evidence reasonably requested by the *IESO* in support of the *interim true-up payment*.
 - ii. Within four (4) *business days* of receipt of the *interim true-up statement*, the *IESO* shall review such statement and, to the extent it disputes any matter with respect to such statement, including the *interim true-up payment* amount, the *Parties* agree that they shall make good faith efforts to negotiate and amicably resolve any such dispute.
 - iii. The *IESO* shall include the undisputed portion, if any, of the *interim true-up payment* for that *interim period* in the *Physical Service Provider's invoice* and *settlement statements* for the subsequent month, and such amount, if any, shall be paid by the *IESO* or the *Physical Service Provider*, as the case may be, in accordance with Section 8.1 of this *Agreement*.

- iv. Any dispute specified in, but not resolved pursuant to, subsection 4(c)(ii) shall be resolved in accordance with the provisions of Chapter 9 of the *market rules*. Upon the final determination of such dispute, any amount determined to be owing pursuant to such resolution shall be included in the next available *invoice* and *settlement statements* to the *Physical Service Provider* following such resolution, and such amount shall be paid by the *IESO* or the *Physical Service Provider*, as the case may be, in accordance with Section 8.1 of this *Agreement*.

5. *Early Termination Payment*

- a. Upon the *IESO's* early termination of the *Agreement* pursuant to Section 7.3 of this *Agreement* or an early termination of the *Agreement* by the *Physical Service Provider* pursuant to Section 9.14 of this *Agreement* as a result of the *IESO's* default, the *IESO* shall pay to the *Physical Service Provider* its *termination costs*.
- b. The procedure for the calculation and payment of the *termination costs* shall be as follows, and shall in all cases be subject to the *IESO's* audit rights:
 - i. Within sixty (60) days of the date of any termination pursuant to subsection 5(a), the *Physical Service Provider* shall prepare and deliver to the *IESO* a *termination costs statement* calculating in detail the *termination costs* to be received by the *Physical Service Provider*, and shall provide to the *IESO* detailed financial statements and all calculations and values used to determine or which support the calculation of the *termination costs* and any other evidence reasonably requested by the *IESO* in support of the *termination costs*.
 - ii. Within thirty (30) days of receipt of the *termination costs statement*, the *IESO* shall review the *termination costs statement* and, to the extent it disputes any matter with respect to such statement, including the *termination costs* amount, the *Parties* agree that they shall make good faith efforts to negotiate and amicably resolve any such dispute.
 - iii. The *IESO* shall include the undisputed portion, if any, of the *termination costs* in the *Physical Service Provider's* *invoice* and *settlement statements* for the next month immediately following the month in which the *IESO* completes its review of the *termination costs statement*, and such amount, if any, shall be paid by the *IESO* in accordance with Section 8.1 of this *Agreement*.
 - iv. Any dispute specified in, but not resolved pursuant to, subsection 5(b)(ii) shall be resolved in accordance with the provisions of Chapter 9 of the *market rules*. Upon the final determination of such dispute, any amount determined to be owing pursuant to such resolution shall be included in the next available *invoice* and *settlement statements* to the *Physical Service Provider* following such resolution, and such amount, if any, shall be paid by the *IESO* in accordance with Section 8.1 of this *Agreement*.

6. True-up Payments Accrued Prior to OEB Approval

Notwithstanding anything else in the *Agreement*, if the *Agreement* is approved by the *Ontario Energy Board* after October 1, 2007, with respect to any true-up payments accrued and payable prior to such approval, the following shall apply:

- a. Each *Party* shall prepare and deliver to the other *Party* its *monthly true-up statements* and, in the case of the *Physical Service Provider*, an *interim true-up statement*, for the completed months prior to the date of such approval. Such statements shall be subject to the procedure and timing for review and determination set out in subsections 3(c)(i) and (ii), and 4(c)(i) and (ii) of this Schedule A, and the “completed month” referred to in subsection 3(c)(i) shall be deemed to be the first full month following such *Ontario Energy Board* approval.
- b. Within ten (10) *business days* of the *Parties*’ completion of the review of the foregoing statements, the *IESO* shall, using the undisputed amounts from such statements, calculate the total of the *monthly true-up payment* and *interim true-up payment* (the “*accrued true-up payment*”) owing by the relevant *Party* and shall prepare and deliver to the *Physical Service Provider* a statement showing the calculation thereof and the calculation of the *monthly accrued true-up payment*, as defined and described in subsection (d) below.
- c. Within three (3) *business days* of receipt of the *IESO*’s calculations of the *accrued true-up payment* and the *monthly accrued true-up payment*, the *Physical Service Provider* shall promptly review such calculations, and, to the extent it disputes any matter with respect to such calculation, the *Parties* agree that they shall make good faith efforts to negotiate and amicably resolve any such dispute.
- d. The *accrued true-up payment* shall be payable over the remaining term of the *Agreement* by dividing the total *accrued true-up payment* by the number of *monthly payments* remaining to be paid (without reference to *monthly payments* already accrued and paid), and paying that amount (the “*monthly accrued true-up payment*”) to the *Physical Service Provider* at the same time each such remaining *monthly payment* is made.
- e. Using the undisputed amounts from the *accrued true-up payment* and the *monthly accrued true-up payment*, the *IESO* shall calculate the undisputed portion, if any, of the *monthly accrued true-up payment* to be received by the relevant *Party* and shall include such amount for that month in the *Physical Service Provider*’s *invoice* and *settlement statements* for the applicable month, and such amount, if any, shall be paid by the *IESO* or the *Physical Service Provider*, as the case may be, in accordance with Section 8.1 of this *Agreement*.
- f. Any dispute with respect to the *accrued true-up payment* or the *monthly accrued true-up payment* that is not resolved by the *Parties* shall be resolved in accordance with the provisions of Chapter 9 of the *market rules*. Upon the final determination of such dispute, any amount determined to be owing pursuant to such resolution shall be included in the next available *invoice* and *settlement statements* to the *Physical Service Provider* following such resolution, and such amount shall be paid by the *IESO* or the *Physical Service Provider*, as the case may be, in accordance with Section 8.1 of this *Agreement*.

SCHEDULE B

PERFORMANCE STANDARDS

1. Definition and Calculation of *EFOR – OP*

The *penalty* or *reward* (each as defined in Section 3 below) payable by the relevant *Party* pursuant to this Schedule B shall be calculated with reference to the difference between the *reliability must-run facilities'* actual *EFOR – OP* and the *EFOR - OP target*, each as described below.

"*EFOR – OP*" is a measure of a generating unit or station's reliability when it is required to operate. It is a measure of the percentage of total "exposure" time represented by "forced" occurrences. *EFOR - OP* includes Operating Time and ABNO (Available But Not Operating). The *EFOR - OP* metric is similar to the measure Equivalent *Forced Outage Rate* (EFOR) except that it accounts for ABNO and Available But Not Staffed (ABNS) in the metric's denominator.

EFOR – OP shall be calculated as follows:

$$EFOR(OP) = \frac{\sum_{Units} \left\{ \sum_{EFOR(OP)_N_States} MCR * Duration \right\}}{\sum_{Units} \left\{ \sum_{EFOR(OP)_D_States} MCR * Duration \right\}} * 100$$

Where:

EFOR_N_States =
FO1, FO2, FO3, FOT,
SO, SOT,
FEMO, FEPO,
EO_FD, ESCC_FD,
EABNO_FD, EABNS_FD,

EFOR_D_States =
O, O_FD, O_SD, O_GD,
SCC, SCC_FD, SCC_SD, SCC_GD,
FO1, FO2, FO3, FOT,
SO, SOT,
FEMO, FEPO,
ABNO, ABNO_FD, ABNO_SD, ABNO_GD,
ABNS, ABNS_FD, ABNS_SD, ABNS_GD

Definitions:

| State Code | Full Name |
|------------|---|
| ABNO | Available but Not Operating |
| ABNO_FD | Available but Not Operating-Forced Derated |
| ABNO_GD | Available but Not Operating-Grid Derated |
| ABNO_SD | Available but Not Operating-Scheduled Derated |
| ABNS | Available but Not Staffed |
| ABNS_FD | Available but Not Staffed - Forced Derated |
| ABNS_GD | Available but Not Staffed - Grid Derated |
| ABNS_SD | Available but Not Staffed - Scheduled Derated |
| EO_FD | Equiv. Operating Forced Derated |
| ESCC_FD | Equiv. Synch. Condenser Forced Derated |
| EABNO_FD | Equiv. ABNO Force Derated |
| EABNS_FD | Equiv. ABNS Force Derated |
| FEMO | Forced Extension of Maintenance Outage |
| FEPO | Forced Extension of Planned Outage |
| FO1 | Forced Outage class 1 < 10 min notice |
| FO2 | Forced Outage class 2 > 10 min <6 hour notice |
| FO3 | Forced Outage class 3 >6 hour notice |
| FOT | Forced Outage Trip |
| O | Operating |
| O_FD | Operating Forced Derated |
| O_GD | Operating Grid Derated |
| O_SD | Operating Scheduled Derated |
| SCC | Synchronous Condenser Operation |
| SCC_FD | Synchronous Condenser Operation - Forced |
| SCC_GD | Synchronous Condenser Operation - Grid Derated |
| SCC_SD | Synchronous Condenser Operation – Scheduled Derated |
| SO | Sudden Outage (>25% Unit MCR) |
| SOT | Sudden Outage (> 25% Unit MCR) – Tripped |

and

MCR means maximum continuous rating.

2. *EFOR - OP Targets*

The *Physical Service Provider* shall maintain, consistent with *good utility practices*, an *EFOR - OP* of between 4% and 6% for the peak period and an *EFOR - OP* of between 6% and 8% for the shoulder period (each an "*EFOR - OP target*"). The peak period shall be the total time period from:

- a. December 1, 2007 to March 31, 2008; and
- b. June 1, 2008 to September 30, 2008.

The shoulder period shall be the total time period from:

- a. October 1, 2007 to November 30, 2007 and April 1, 2008 to May 31, 2008; or
- b. any part of either period if the *Agreement* is terminated prior to the expiration of the term.

3. *Penalties or Rewards for Not Meeting or Exceeding the EFOR - OP Target*

The calculation of the *penalty* or *reward* that shall apply where the *EFOR - OP target* is not met or is exceeded shall be completed as follows:

- The actual *EFOR - OP* shall be calculated for each of the two time periods noted above.
- A *penalty* (a "*penalty*") or *reward* (a "*reward*") shall be calculated with reference to the *EFOR - OP target* and the actual *EFOR - OP* for the relevant time period, as described below.
- Performance shall be measured by the application of performance points (each a "*performance point*"), with *performance points* calculated for each time period as the percentage number by which the actual *EFOR - OP* was below or above the *EFOR - OP target*, calculated to the first decimal place.
- For purposes of calculating a *penalty* or *reward* for a time period, each *performance point* shall be valued at \$125,000 for the shoulder period and \$250,000 for the peak period.
- Upon the expiration or termination of the *Agreement*, the total net *penalty* or *reward* payable shall be calculated by aggregating together the *penalty* or *reward* for each time period (the "*net penalty/reward*"), and shall be paid following such expiration or termination as set out in Section 4 below.
- The total net *penalty* or *reward* payable shall not exceed \$2 million.
- No *penalty* or *reward* shall be calculated or applicable during, and no *net penalty/reward* shall be payable in respect of, any period in which the *Physical Service Provider* is experiencing a *force majeure event*.

For illustration purposes only, the following examples demonstrate the application of the foregoing calculations:

Example 1

- Value for the shoulder period for each *performance point*: \$0.125 M.
- Indexes calculated for the aggregate shoulder period:
 - *EFOR – OP*: 3.5% (2.5 *performance points* below the *EFOR - OP target*)
 - *Reward*: $2.5 * \$0.125 \text{ M} = \0.31 M

Example 2

- Value for the peak period for each *performance point*: \$0.250 M.
- Indexes calculated for the aggregate peak period:
 - *EFOR – OP*: 8% (2 *performance points* above the *EFOR - OP target*)
 - *Penalty*: $2 * \$0.250 \text{ M} = \0.5 M

4. Procedures for Calculation of the *Net Penalty/Reward*

The procedure for the calculation and payment of the *net penalty/reward* shall be as follows, and shall in all cases be subject to the *IESO's audit rights*:

- a. Within thirty (30) days of the expiration or termination of the *Agreement*, the *Physical Service Provider* shall prepare and provide to the *IESO* the *EFOR – OP* for each time period and shall provide to the *IESO* all calculations and values used to determine or which support the calculation of such *EFOR - OP* and any other evidence reasonably requested by the *IESO* in support thereof.
- b. Within fifteen (15) days of receipt of the foregoing, the *IESO* shall review the foregoing information provided by the *Physical Service Provider* and shall calculate the *net penalty/reward* (the "*net penalty/reward statement*") and the amount of the payment owing by the relevant *Party*, and shall provide to the *Physical Service Provider* its calculations used to determine the *net penalty/reward* and the amount owing.
- c. Within ten (10) days of receipt of the *net penalty/reward statement*, the *Physical Service Provider* shall review the *net penalty/reward statement*.
- d. To the extent either *Party* disputes any matter with respect to the *Physical Service Provider's* calculation of *EFOR – OP* or the *net penalty/reward statement*, including the *net penalty/reward* amount, the *Parties* agree that they shall make good faith efforts to negotiate and amicably resolve any such dispute.

- e. The *IESO* shall include the undisputed portion, if any, of the *net penalty/reward* in the *Physical Service Provider's invoice* and *settlement statements* for the next month immediately following the month in which the *Physical Service Provider* completes its review of the *net penalty/reward statement*, and such amount, if any, shall be paid by the relevant *Party* in accordance with Section 8.1 of this *Agreement*.
- f. Any dispute specified in, but not resolved pursuant to, subsection 4(d) shall be resolved in accordance with the provisions of Chapter 9 of the *market rules*. Upon the final determination of such dispute, any amount determined to be owing pursuant to such resolution shall be included in the next available *invoice* and *settlement statements* to the *Physical Service Provider* following such resolution, and such amount, if any, shall be paid by the relevant *Party* in accordance with Section 8.1 of this *Agreement*.

SCHEDULE C**COMPANY REPRESENTATIVES FOR NOTIFICATIONS**

| | |
|-------------------------------------|---------------------------|
| Name of <i>IESO</i> Representative: | Douglas Thomas |
| Title: | Director, Settlements |
| Address: | Suite 410, 655 Bay Street |
| City/Province/Postal Code | Toronto, Ontario, M5G 2K4 |
| Email address: | douglas.thomas@ieso.ca |
| Phone: | (905) 855-6390 |
| Fax: | (905) 855-8688 |

| | |
|--|-----------------------------------|
| Name of <i>Physical Service Provider</i> Representative: | Ken Lacivita |
| Title: | Director, Trading and Origination |
| Address: | 700 University Avenue - H9D18 |
| City/Province/Postal Code | Toronto, Ontario, M5G 1X6 |
| Email address: | k.lacivita@opg.com |
| Phone: | (416) 592-5585 |
| Fax: | (416) 592-7584 |

SCHEDULE D

OPERATING COST, GROSS REVENUE AND MARGIN AMOUNTS

AND CALCULATION OF MONTHLY PAYMENTS

1. Operating Cost and Gross Revenue Amounts

The *Physical Service Provider* has provided the estimates in Table 1 below of the costs and revenues associated with operating the *reliability must-run facilities* through the term of the *Agreement*. These estimates form the basis for the *operating cost amounts* and the *retained gross revenue amounts* which comprise part of the calculation of the *monthly payments* to be made by the *IESO* to the *Physical Service Provider*. For greater certainty, the *Physical Service Provider* represents and warrants that the costs set out in Table 1 do not include any capital costs relating to the *reliability must-run facilities* or any costs relating to the de-registration and removal from service of the *reliability must-run facilities* or any part thereof or any subsequent decommissioning costs relating thereto.

2. Retained Gross Revenue Amount

The *Parties* acknowledge and agree that each of them shall benefit from the provision of a form of incentive - through the *retained gross revenue amount* - which incents the *Physical Service Provider* to maximize *gross revenue* during the term of this *Agreement*, and permits the *Parties* to share in those revenues.

The *IESO* and the *Physical Service Provider* agree that the "*retained gross revenue amount*" shall be calculated as 95% of the *gross revenue*, including the revenue categories described in Table 1. The *retained gross revenue amount* shall be set off against the *operating cost amount* and *margin amount*, as part of the calculation of the *monthly payments* to be made by the *IESO* to the *Physical Service Provider*, and shall be trued-up on a monthly basis as part of the calculation of the *monthly true-up payment*.

3. Margin Amount

The *Parties* acknowledge and agree that the *Physical Service Provider* shall incur certain costs and assume certain risks not otherwise compensated with respect to the operation of the *reliability must-run facilities* during the term of this *Agreement*, and agree that the *Physical Service Provider* shall be compensated for such costs and risks in the form of the *margin amount*.

The *IESO* and the *Physical Service Provider* agree that the "*margin amount*" shall be \$1,492,931.65, calculated as 5% of the aggregate amount specified in the "Labour", "Energy Markets" and "Corporate Functions at Facilities" cost categories in Table 1. The *margin amount* shall comprise part of the calculation of the *monthly payments* to be made by the *IESO* to the *Physical Service Provider*.

4. Calculation of *Monthly Payment*

As noted in Table 1, the *monthly payment* shall be \$6,485,244.13, calculated for each month as the *operating cost amount* plus the *margin amount* minus the *retained gross revenue amount*, divided by twelve (12). The calculation of the *monthly payment* is shown at the end of Table 1.

Table 1: Estimated Operating Cost, Gross Revenue, Retained Gross Revenue and Margin Amounts for the Reliability Must-Run Facilities for October 1, 2007 to September 30, 2008

| Cost Category | Amount(\$) |
|---|------------------------|
| Fuel Costs ^{1,2} | |
| Fixed and Variable Fuel Costs ³ | \$23,881,470.62 |
| OM&A Costs | |
| Labour ⁴ | \$28,203,833.00 |
| Energy Markets (fuel purchasing / trading) | \$254,800.00 |
| Materials | \$4,871,972.00 |
| Other ⁵ | \$4,518,123.00 |
| OEB Approval Process ⁶ | \$28,000.00 |
| Projects ⁷ | \$16,641,000.00 |
| Corporate Functions at Facilities ⁸ | \$1,400,000.00 |
| Insurance | \$1,750,000.00 |
| Property taxes | \$3,000,000.00 |
| IESO Market Costs | |
| Net Energy Market Settlement for Non-dispatchable Load - CC 101 | 0 |
| Network Pool Service Charge- CC 650 | \$682,856.36 |
| Debt Retirement Charge - CC 752 | \$631,150.54 |
| Rural Rate Assistance Settlement Credit - CC 753 | \$90,164.38 |
| OPA Administration Charge - CC 754 | \$18,658.12 |
| IESO Energy Market Administration Charge - CC 9990 | \$77,244.68 |
| Uplift ⁹ | \$221,653.06 |
| Other Costs | |
| Non-IESO Market Revenue Costs ¹⁰ | 0 |
| Financing Cost on Working Capital ¹¹ | \$3,700,000.00 |
| | |
| TOTAL ESTIMATED OPERATING COST AMOUNT (O) | \$89,970,925.76 |
| MARGIN AMOUNT (M) | \$1,492,931.65 |

NOTES:

¹ Although reactive power relating to the *reliability must-run facilities* comprises a portion of its operating costs, reactive power costs and revenues are subject to a separate contractual arrangement between the *IESO* and the *Physical Service Provider* in which those costs and revenues offset each other. Accordingly, reactive power has not been included for treatment under this *Agreement*.

² Where used in the table, "CC" refers to the *IESO* charge code.

³ Includes auxiliary boiler fuel.

⁴ Based on staffing of two units of the *reliability must-run facilities* 24 hours a day, 7 days a week and the other two units from Monday to Friday, inclusive, on a day shift from 07:00 to 19:00 local time. Consists of total of 163 regular staff located at the facilities in the areas of operations, maintenance, asset and business support. Costs include salary, burden, overtime and temporary labour.

⁵ Principal elements are comprised of external purchased services, employee expenses, relocation costs and obsolescence.

⁶ Direct costs of the *Physical Service Provider* applicable to any process required to obtain the *Ontario Energy Board's* approval of this *Agreement*.

⁷ Includes costs for non-routine maintenance, repairs and replacements managed on a project specific basis. All expenditures on equipment are expensed in the year incurred in accordance with generally accepted accounting principles. Major projects include:

- i. permanent unloading shed;
- ii. generator rotor inspection / repair; and
- iii. water treatment plant controls

⁸ Comprised principally of controllership, human resources and information systems staff and related costs directly supporting the *reliability must-run facilities*. All staff providing this functional area support are physically located at the *reliability must-run facilities*.

⁹ Currently includes *IESO* uplift; may in future include any other *governmental authority*-approved wholesale fees and charges.

¹⁰ Comprised of direct incremental costs associated with earning *non-IESO* market revenue.

¹¹ Working capital financing on all inventory based on monthly ending balances at 6% per annum.

| Revenue Category | Amount (\$) |
|--|------------------------|
| Energy | |
| Net Energy Market Settlement – CC 100 | \$12,806,898.42 |
| CMSC for Energy – CC 105 | 0 |
| Generation Cost Guarantee Payment – CC 133 | 0 |
| Ancillary | |
| 10 Minute Spinning Reserve Market Settlement Credit– CC 200 | \$1,551,972.99 |
| 10 Minute Non-spinning Reserve Market Settlement Credit – CC 202 | 0 |
| 30 Minute Operating Reserve Market Settlement Credit– CC 204 | 0 |
| CMSC for 10 Minute Spinning Reserve – CC 106 | 0 |
| CMSC for 10 Minute Non-spinning Reserve – CC 107 | 0 |
| CMSC for 30 Minute Operating Reserve – CC 108 | 0 |
| Salvage | |
| Gas Salvage Margin ¹² | 0 |
| Other | |
| Global Adjustment Settlement Amount – CC 146 | 0 |
| OPG Non- Prescribed Assets Adjustment ¹³ | 0 |
| Other IESO Market Revenues ¹⁴ | 0 |
| Non-IESO Market Revenues | 0 |
| Total Estimated Gross Revenues | \$14,358,871.42 |
| | |
| TOTAL ESTIMATED RETAINED GROSS REVENUE AMOUNTS (G) | \$13,640,927.85 |
| | |
| MONTHLY PAYMENT [(O+M-G)]/12 | \$6,485,244.13 |

NOTES:

¹² Historically the total gain or loss on gas sales has been treated as a direct adjustment of fuel costs.

¹³ As a load, the *reliability must-run facilities* earn the OPG Non-Prescribed Assets Adjustment specified in Order-in-Council 207/2005. Any Business Protection Plan Rebate attributable to the *reliability must-run facilities* shall not be included in *gross revenues* as this relates to an activity in a period prior to the start of this *Agreement*.

¹⁴ This item includes revenues earned in the *IESO-administered market*, not explicitly listed elsewhere in this table, such as revenues resulting from the Day-Ahead Commitment Process, or other programs that may be introduced during the term of this *Agreement*.

SCHEDULE E
FORM OF CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made as of

BETWEEN:

(hereinafter referred to as “**Auditor**”)

OF THE FIRST PART

- and -

ONTARIO POWER GENERATION INC.,
a corporation incorporated under the laws
of the Province of Ontario

(hereinafter referred to as “**OPG**”)

OF THE SECOND PART

WHEREAS the Independent Electricity System Operator (“*IESO*”) has appointed the Auditor to review certain books, records, data, procedures and operations of OPG pursuant to a Reliability Must-Run Agreement (the “RMR Agreement”) dated as of October 1, 2007 in respect of the Lennox Generating Station (“Lennox”) between the *IESO* and OPG, for purposes of verifying OPG’s compliance with its obligations under that *Agreement* and discussing the results of its audit with, and reporting thereon to, the *IESO* (an “Audit”).

AND WHEREAS OPG has and will be furnishing, disclosing or otherwise making available for inspection and review by the Auditor certain information (including without limitation, pricing information under supply contracts, financial, technical, operational, commercial, staff, management and other information, data, experience and knowledge relating to Lennox by oral, electronic, written

and other forms of communication including, without limitation, demonstrations and information by chart, diagram, models, computer programs, or other tangible form, which information is either non-public, confidential or proprietary in nature. This information furnished by OPG, together with analyses, compilations, forecasts, studies or other documents prepared by the Auditor which contain or otherwise reflect such information, is hereinafter referred to collectively as the "*confidential information*".

AND WHEREAS it is the intention of the *Parties* hereto that the terms, conditions and restrictions of this Confidentiality Agreement shall be construed so as to be given the broadest application and effect and, to the extent that the context permits, the terms "OPG" and "Auditor" shall for all purposes be deemed to include their respective agents, representatives (including lawyers, engineers, accountants, consultants, and other professional or financial advisors), employees, partners, and including without limitation all individuals, organizations or entities (collectively, "representatives") that either *Party* may use to assist it for purposes of the Audit and who may be shown or have described to them *confidential information*.

NOW THEREFORE in consideration of OPG's furnishing, disclosing or otherwise making available for inspection and review by the Auditor *confidential information*, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the *Parties* covenant and agree that:

1. OPG will be furnishing, disclosing or otherwise making available for inspection and review by the Auditor *confidential information* for purposes of the Audit.
2. Notwithstanding any term in this Confidentiality Agreement, the Auditor may disclose to the *IESO* information that is reasonably required by the *IESO* for the Audit provided that:
 - i. such disclosure will not cause OPG to breach any of its confidentiality requirements (including, without limitation, confidentiality requirements in its supply contracts); and
 - ii. information about any of OPG's *facilities* or businesses other than Lennox is not contained in such disclosure.
3. Without the prior written consent of OPG, except as required by *applicable law* and as permitted by Sections 2 and 6 of this *Agreement*, the Auditor shall not disclose any *confidential information* received in any manner whatsoever, in whole or in part, and such information shall not be used by the Auditor other than for purposes of the Audit. The Auditor acknowledges that the *confidential information* referred to in this Confidentiality Agreement is confidential and proprietary to OPG, is supplied in confidence, and for the purposes of this Confidentiality Agreement the Auditor does not dispute that disclosure of this information would prejudice significantly the competitive position of OPG.
4. Save and except for notes made by the Auditor during its inspection and review of the *confidential information*, the Auditor shall not make any copies or reproductions of the *confidential information* in any medium or form other than as reasonably necessary for purposes of the Audit.

5. Notwithstanding the disclosure of *confidential information* to the Auditor, the *confidential information* shall remain the sole and exclusive property of OPG. OPG does not waive its right to maintain the *confidential information* in confidence, and to avail itself of any and all remedies available at law to maintain such information in confidence.

6. The Auditor shall only disclose the *confidential information* to:

- i. such of its representatives who need to know the *confidential information* for the purposes of the Audit and only if the representatives have agreed to be bound by the terms of this Confidentiality Agreement; and
- ii. the Canadian Public Accountability Board if so requested by that board for purposes of its oversight responsibility for audit firms.

The Auditor hereby specifically acknowledges that it shall be solely responsible to ensure that the representatives are bound by the terms of this Confidentiality Agreement and that the Auditor shall defend, indemnify and hold harmless OPG from and against all suits, actions, damages, claims and costs arising out of any breach of this Confidentiality Agreement by the *representatives*.

7. At all times, and at a minimum, the Auditor will take the same precautions to protect the *confidential information* that it takes to protect its own proprietary and *confidential information*. The Auditor will take all reasonable steps and precautions to prevent the unauthorized disclosure of the *confidential information* or the unauthorized use of the *confidential information* for any purpose not expressly allowed herein.

8. Upon OPG's request, or on the expiry of the RMR Agreement, and subject to:

- i the survival period specified in Section 7.5 thereunder; and
- ii the Auditor's record retention policy:

the Auditor shall promptly:

- a. return or destroy all *confidential information* disclosed or otherwise obtained in writing or recorded in any medium or form, including all copies or reproductions thereof, and will certify to OPG that it has done so;
- b. where not included in the *confidential information* to be retained by OPG, destroy all analyses, compilations, forecasts, studies or other documents disclosed to or otherwise obtained in writing or recorded in any form, including all copies or reproductions thereof, other than any analyses, compilations, forecasts, studies or other documents prepared by the Auditor which contain *confidential information*, and will certify to OPG that it has done so; and

- c. where not included in the *confidential information* to be returned to OPG, permanently erase and remove all *confidential information* from hard drives, taped back ups, and any other medium or form from which the *confidential information* could be recovered so that such *confidential information* cannot be recovered by any means, and will certify to OPG in writing that it has done so.
9. The Auditor agrees to provide immediate notice to OPG of any breach of this Confidentiality Agreement or misappropriation of the *confidential information* upon becoming aware of such breach.
10. In the event that the Auditor, or anyone to whom the Auditor transmits *confidential information* pursuant to this Confidentiality Agreement or otherwise, becomes legally compelled to disclose any *confidential information*, the Auditor will provide OPG with prompt notice so that OPG may seek injunctive relief or other appropriate remedies and/or waive compliance with the provision of this Confidentiality Agreement. Furthermore, the Auditor will exercise all reasonable efforts to prohibit the further transmission of the *confidential information*, including reasonable efforts to assist OPG to contest and resist such disclosure. In the event that both *Parties* are unable to prevent the further transmission of the *confidential information*, the Auditor will use reasonable efforts to obtain assurances that confidential treatment will be afforded to that portion of the *confidential information* furnished.
11. For the purposes of this Confidentiality Agreement the Auditor does not dispute that OPG would be irreparably injured by a breach of this Confidentiality Agreement and would be entitled to equitable relief, including injunctive relief and specific performance as may be granted by any court of competent jurisdiction to prevent breaches of this Confidentiality Agreement and to enforce specifically the terms and provisions hereof in any action instituted in any court having subject matter jurisdiction.
12. The restrictions set forth herein shall not apply to the *confidential information* if it:
 - a. was previously known to or lawfully in the possession of the Auditor prior to being furnished, disclosed or otherwise made available to the Auditor;
 - b. is or has become public knowledge, by publication or otherwise, through no fault or breach of this *Agreement* on the part of the Auditor or its *representatives*;
 - c. is or becomes available to the Auditor on a non-confidential basis from another source other than OPG, provided that such source is not known by the Auditor to be subject to a confidentiality obligation with respect to such information; or
 - d. is developed by the Auditor entirely independent of and without reference to the *confidential information*.

13. This Confidentiality Agreement shall be binding upon the Auditor and its respective successors and assigns. The Auditor may not assign or otherwise transfer in whole or in part this Confidentiality Agreement or rights or obligations hereunder without the prior written consent to such assignment or transfer by OPG. Any such attempted assignment or transfer without written consent shall be void and of no force and effect.
14. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The *Parties* attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any suit, action, application or proceeding relating to this Confidentiality Agreement ("Proceedings"), and waive any objection which they may have at any time to this venue, and hereby waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object with respect to such Proceedings that such courts do not have jurisdiction over the *Parties*.
15. If any provision of this Confidentiality Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provision of this Confidentiality Agreement which shall otherwise remain in full force and effect and be enforced in accordance with its terms and the effect of such holding, declaration or pronouncement shall be limited to the territory or jurisdiction in which made.
16. All the rights and remedies of OPG under this Confidentiality Agreement are cumulative and not exclusive of any other rights and remedies provided by law. No delay or failure on the part of OPG in the exercise of any right or remedy arising from a breach of this Confidentiality Agreement shall operate as a waiver of any subsequent right or remedy arising from a subsequent breach of this Confidentiality Agreement. The consent of OPG where required hereunder to any act or occurrence shall not be deemed to be a consent to any other act or occurrence.
17. The *Parties* hereby acknowledge and agree that this Confidentiality Agreement does not create a partnership, joint venture or any other relationship between the *Parties*.
18. This Confidentiality Agreement contains the whole agreement between the *Parties* relating to the subject matter of this Confidentiality Agreement and shall supersede any and all promises, representations, warranties, undertakings or other statements whether written or oral made by or on behalf of the one *Party* to the other *Party* of any nature whatsoever or contained in any document given by one *Party* to the other.
19. This Confidentiality Agreement may only be amended by mutual agreement, in writing, of the *Parties* hereto.
20. The Confidentiality Agreement shall come into force on the date first shown above and shall remain in force until three years from the date of the last audit performed by the Auditor under this Confidentiality Agreement.

21. Unless otherwise provided herein, every notice provided for this Confidentiality Agreement shall be in writing to the *Party* to whom given, made or delivered at such *Party's* address, either personally or by registered and prepaid mail or by facsimile as follows:

to the Auditor at:

Attention:

Telephone:

Facsimile:

to OPG at:

Ontario Power Generation Inc.
700 University Avenue H9D18
Toronto, ON M5G 1X6

Attention: Mr. Ken Lacivita
Director, Trading and Origination

Telephone: (416) 592-5585

Facsimile: (416) 592-7932

Either *Party* may change its address for service of notice from time to time by giving notice of such change to the other *Party* in the manner provided for herein. Any notice made, given or delivered under this Confidentiality Agreement shall be in writing and shall be served on the relevant *Party* hereto by delivering the notice by hand, sending it by facsimile transmission or by first class post (recorded delivery) addressed to the relevant *Party* at its address set out above or to such other address as that *Party* may have changed as set out herein. Any such notice shall be deemed to have been validly served, if delivered by hand on delivery, or five (5) days after posting by first class (recorded delivery) mail, or if transmitted prior to 4:00 P.M. Eastern Standard Time on the date of transmission in the case of facsimile transmission provided such day is a *business day*, or the first *business day* thereafter if transmitted after 4:00 P.M. Eastern Standard Time, or in the event such day was not a *business day*.

IN WITNESS WHEREOF the *Parties* have caused this Confidentiality Agreement to be executed by their proper officers duly authorized in that behalf as of the date and year first written above.

ONTARIO POWER GENERATION INC.

[Auditor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

I have authority to bind the Corporation

I have authority to bind the ■