

# STIKEMAN ELLIOTT

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**BY EMAIL & COURIER**

March 13, 2013  
File No. 101926.1050

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Yonge-Eglinton Centre  
P.O. Box 2319  
2300 Yonge Street, Suite 2700  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Smart Metering Charge  
EB-2012-0100/EB-2012-0211**

The SME has identified two formula errors in the presentation of totals in Appendix A filed with the Board on March 8, 2013. We are filing a revised version of the Settlement Proposal that corrects those errors. The changes are as follows:

1. The Total IESO Costs for 2006 to 2012 has been corrected to show \$13,972,925 instead of \$6,822,780. The spreadsheet contained an error that summed the line items for 2013. The amounts for the component line items for 2006 to 2012 have not changed.
2. The Sub-Totals and Totals for 2013, 2014, 2015, 2016, 2017 were overstated because the first row containing the year was accidentally included in the formula. These numbers have been therefore been reduced by 2013, 2014, 2015, 2016, and 2017 respectively.

These formula errors had no impact on the total Revenue Requirement requested by the SME.

Yours truly,



Patrick G. Duffy

PGD/il

cc: Registered Intervenors  
Paul Vlahos  
Brian Rivard, IESO  
Paula Lukan, IESO

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**  
**SMART METERING CHARGE**  
**SETTLEMENT PROPOSAL**  
**EB-2011-0100/ EB-2012-0211**

## PREAMBLE

This Settlement Proposal is filed with the Ontario Energy Board ("**OEB**" or "**Board**") in connection with:

- the application in EB-2012-0100 by the Independent Electricity System Operator ("**IESO**") in its capacity as the Smart Metering Entity ("**SME**") for an order fixing a Smart Metering Charge ("**SMC**"); and
- the proceeding in EB-2012-0211 commenced by the Board on its own motion to determine the appropriate allocation and recovery of the SMC.

The Settlement Proposal arises from a Settlement Conference facilitated by Mr. Paul Vlahos and conducted on February 19 and 20, 2013 as ordered by the Board in Procedural Order No. 7 and pursuant to Rule 31 of the OEB's *Rules of Practice and Procedure* ("**Rules**") and the OEB's *Settlement Conference Guidelines* ("**Guidelines**"). This Settlement Proposal was prepared in accordance with Rule 32 of the *Rules* and the *Guidelines*.

The SME and the following intervenors participated in the Settlement Conference:

- Electricity Distributors Association ("**EDA**")
- Canadian Manufacturers & Exporters ("**CME**")
- Consumers Council of Canada ("**CCC**")
- Energy Probe Research Foundation ("**EP**")
- School Energy Coalition ("**SEC**")
- Vulnerable Energy Consumers Coalition ("**VECC**")

The listed Intervenors are collectively defined as the "**Intervenors**" and, together with the SME, as the "**Parties**".

The Parties have agreed to a settlement on all issues in EB-2012-0100.

There was no Board-approved Issue List in EB-2012-0211. The issues were phrased by the facilitator and had agreement by all Intervenors. The Intervenors have agreed to a settlement of three of the four issues in EB-2012-0211. The settled issues and the unsettled issue are set out at the appropriate section later in this document.

The SME is not a party to the Settlement Proposal in EB-2012-0211 and takes no position on any issue in that proceeding.

Ontario Energy Board Staff also participated in the settlement conference but are not a party to this Settlement Proposal and therefore take no position on any issue in either EB-2012-0100 or EB-2012-0211. Board Staff are, however, still subject to the *Rules* and *Guidelines* with respect to confidentiality and privilege in the same way as the Parties.

In accordance with Rule 32 of the Board's *Rules* and the *Guidelines*, this Settlement Proposal outlines the Parties' agreement and provides a direct and transparent link between the issues and the evidence in the record. None of the Parties can withdraw from the Settlement Proposal except in accordance with Rule 32.

The Parties agree that the evidence is sufficient to support the Settlement Proposal in respect of the settled issues and that the quality and detail of the supporting evidence will allow the Board to make findings on the settled issues.

The Parties further agree that all positions, negotiations and discussion of any kind whatsoever that took place during the Settlement Conference and all documents exchanged during the conference that were prepared to facilitate settlement discussions are:

- strictly confidential and without prejudice; and
- inadmissible in any Board proceeding unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Settlement Proposal.

It is fundamental to the agreement of the Parties that none of the provisions of this Settlement Proposal are severable. If the Board does not, prior to the commencement of the hearing of the evidence in this proceeding, accept the provisions of the Settlement Proposal in their entirety, there is no Settlement Proposal unless the Parties agree to the contrary.

## **SME APPLICATION FOR SMART METERING CHARGE**

### **1.1 MDM/R Costs**

- (a) Are the 2006 to 2011 OM&A and capital costs proposed to be recovered by the SME reasonable and appropriate?**

For the purposes of this settlement, the Parties accept that the 2006 to 2011 OM&A and capital costs that the SME proposes to recover shown in the updated

Revenue Requirement table attached to this Settlement Proposal as Appendix "A" are reasonable and appropriate.

The following evidence supports this agreement:

- Exhibit C-1 of the Application and Pre-filed Evidence
- Supplemental Pre-filed Evidence dated June 15, 2012
- Transcript for November 6, 2013 Technical Conference
- Response to Undertaking JTC1.1
- Response to Undertaking JTC1.2
- Response to Undertaking JTC1.4
- Response to Undertaking JTC1.5
- Supplemental Pre-filed Evidence dated February 13, 2013

**(b) Are the forecast 2012 to 2017 OM&A and capital costs proposed by SME reasonable and appropriate?**

For the purposes of this settlement, the Parties accept that the actual 2012 OM&A and capital costs that the SME proposes to recover shown in the updated table attached as Appendix "A" are reasonable and appropriate.

For the purposes of this settlement, the Parties accept that the forecast 2013 to 2017 OM&A and capital costs that the SME proposes to recover are reasonable and appropriate with the following changes:

- The forecast "Regulatory Process: Licensing & Cost Recovery" line item will be reduced to the annual amounts shown in the updated Revenue Requirement table attached as Appendix "A". The reduced regulatory costs reflect the changes to the SMC adjustment mechanism detailed in Issues 1.4(c) and (d) below.
- The line item "Provision for Changes to the MDM/R and Contingency" line item has been renamed "Provision for MDM/R Upgrades, Maintenance and Changes". The name change better reflects the actual nature of the cost category, which is to cover MDM/R system upgrades and maintenance and is not intended to be a general contingency amount.

The forecast for that line item has been changed to the annual amounts shown in the updated Revenue Requirement table attached as Appendix "A".

The following evidence supports this agreement:

- Exhibit C-1 of the Application and Pre-filed Evidence
- Supplemental Pre-filed Evidence dated June 15, 2012
- Transcript for November 6, 2013 Technical Conference
- Response to Undertaking JTC1.1
- Response to Undertaking JTC1.2
- Response to Undertaking JTC1.4
- Response to Undertaking JTC1.5
- Supplemental Pre-filed Evidence dated February 13, 2013

## **1.2 Financing Costs**

### **(a) Are the SME's proposals for financing reasonable and appropriate?**

For the purposes of this settlement, the Parties accept the SME's proposals for financing are reasonable and appropriate.

The following evidence supports this agreement:

- Exhibit C-1 of the Application and Pre-filed Evidence
- Supplemental Pre-filed Evidence dated February 13, 2013

### **1.3 IESO/SME Cost Allocation**

- (a) Have shared OM&A, Capital and Financing costs with the IESO been appropriately allocated to the SME?**

For the purposes of this settlement, the Parties accept that the shared OM&A, capital and financing costs with the IESO have been appropriately allocated to the SME.

- Exhibit C-1 of the Application and Pre-filed Evidence

### **1.4 Proposed Rate Structure and Automatic Rate Adjustment**

- (a) Is the SME's proposal to recover its actual and forecasted costs for the period July 1, 2012 to December 31, 2017 reasonable and appropriate?**

The Parties agree to the SME's proposal that the collection period for its approved Revenue Requirement (as detailed above under issues 1.1(a) and (b)) will commence on May 1, 2013 and run to October 31, 2018 (the "**Collection Period**").

The Parties further agree that approval for the SMC shall expire at the end of the Collection Period on October 31, 2018. The SME will be required to bring an application before the Board at a future date for approval to establish and collect the SMC post-October 31, 2018.

The following evidence supports this agreement:

- Exhibit C-2 of the Application and Pre-filed Evidence
- Transcript for November 6, 2013 Technical Conference
- Response to Undertaking JTC1.3

- (b) Is the SME's proposal to use a "per customer" approach as a SMC determinant appropriate?**

The Parties agree that the SME's proposed "per customer" rate structure for the SMC is appropriate.

The Parties agree that the SMC shall be calculated in the following manner:

$$\text{SMC} = [\text{RR} / (\text{R \& GS} < 50\text{kW})] / \text{CP}$$

Where:

**RR** is \$248,635,901 (the SME's approved revenue requirement)

**R & GS < 50kW** is 4,781,795 (the total number of Residential and General Service <50kW Customers listed in the Board's 2011 *Yearbook of Electricity Distributors*)

**CP** is 66 (the total number of months in the Collection Period)

Using the above calculation, the approved SMC is \$0.788 per month per Residential and General Service <50kW Customer.

The SME shall charge the SMC to all licensed LDCs identified in the Board's annual *Yearbook of Electricity Distributors*. For greater clarity, the SME will not collect the SMC from LDCs that are not listed in the Board's annual *Yearbook of Electricity Distributors*. The LDCs that are not listed in the Board's 2011 *Yearbook of Electricity Distributors* are: Cornwall Street Railway Light and Power Company, Hydro One Remotes, Kashechewan Power Company, Fort Albany Power Corporation, and Attawapiskat Power Corporation.

For 2013 (May 1, 2013 to December 31, 2013), the SMC will be charged to each licensed LDC on the basis of the number of Residential and General Service <50kW Customers listed for that distributor in the 2011 *Yearbook of Electricity Distributors* published by the Board.

For each subsequent calendar year in the Collection Period, the SME shall charge each licensed LDC on the basis of the number of Residential and General Service <50kW Customers listed for that distributor in the most recent *Yearbook of Electricity Distributors* published by the Board.

The SME budgeted revenue from the SMC is attached as Appendix "B".

The SME shall invoice LDCs for the SMC on a monthly basis using the IESO's existing settlement process.

The following evidence supports this agreement:

- Exhibit C-2 of the Application and Pre-filed Evidence
- Transcript for November 6, 2013 Technical Conference
- Response to Undertaking JTC1.3



**(c) Is the SME's proposal for an annual automatic adjustment to update the billing determinant with the annual changes in the number of Residential and General Service <50kW Customers listed in the OEB Electricity Distributor Yearbook reasonable and appropriate?**

The Parties agree that there will be no annual automatic adjustment to update the billing determinant for the following reasons:

- The annual growth in the number of Residential and General Service <50kW Customers between May 1, 2013 and October 31, 2018 is expected to have an immaterial impact on the level of the SMC.
- The regulatory costs that would be incurred by the SME, and ultimately paid by ratepayers, in seeking annual approval for the rate adjustment would outweigh the benefits of the adjustment. The elimination of the annual adjustment mechanism has allowed the SME to reduce its forecast costs for "Regulatory Process: Licensing & Cost Recovery" as detailed above under Issue 1.1(b).
- The Parties have agreed to implement an adjustment mechanism detailed below under Issue 1.4(d) that will allow for the possible adjustment of the SMC in the event the SME's revenues are materially greater than forecast.

**(d) What other adjustment mechanisms, if any, should be considered?**

The Parties recognize the importance of ensuring the Board and Intervenor have transparency into the SME's actual costs and revenues relative to the forecast throughout the Collection Period while also minimizing the regulatory costs associated with an annual proceeding.

To achieve this objective, the Parties have agreed to the following adjustment mechanism for the SMC.

- On or before May 1 of each year beginning in 2014, the SME shall file a report with the Board that includes a table substantially in the form of the Sample Annual Report attached as Appendix "C" to this Settlement Proposal that provides:
  - the SME's budgeted and actual costs for the prior calendar year;
  - the SME's budgeted and actual revenue for the prior calendar year; and

- an explanation for any material divergence of actual costs from the forecast costs and revenue for that calendar year.
- The SME shall provide a copy of the report to all Board-approved intervenors in EB-2012-0100 and EB-2012-0211 so as to provide them with an opportunity to submit comments on the report to the Board.
- Upon receipt of the report filed by the SME, the Board may determine that the SME is required to bring an application to adjust the SMC for the remainder of the Collection Period having regard to the following guidelines:
  - If the SME's total actual costs for a calendar year are within \$2 million of the forecast for that calendar year, then the Parties agree that the utility of an application to adjust the SMC would be outweighed by the additional regulatory costs required for such an application, absent exceptional circumstances.
  - If the SME's total actual costs for a calendar year are over or under the forecast for that calendar year by more than \$2 million, then the SME shall bring an application to adjust the SMC unless it provides a satisfactory explanation to the Board for why an application to adjust the SMC is not required.

The following evidence supports this agreement:

- Exhibit C-3 of the Application and Pre-filed Evidence
- Transcript for November 6, 2013 Technical Conference
- Response to Undertaking JTC1.3

### **1.5 Miscellaneous Matters**

- (a) Is the SME's proposal to establish a variance account for changes in the SME costs or revenue surplus reasonable and appropriate?**

The Parties agree that the SME shall maintain three separate variance accounts to ensure that ratepayers are only charged for the prudently incurred costs actually incurred by the SME:

- *Costs Account* to record any changes in the SME's forecast costs shown in the Revenue Requirement table attached as Appendix "A" to this Settlement Proposal.
- *Revenue Account* to record any revenue surplus or deficiency relative to the forecast revenue in the table attached as Appendix "B" to this Settlement Proposal.
- *Service Level Credits Account* to record any service level credits received by the SME from the Operational Service Provider for distribution to MDM/R service recipients under section 7.6 of the SME/LDC Agreement.

The SME shall seek approval to dispose of the balance of each of the variance accounts as part of its next application to adjust the SMC.

The following evidence supports this agreement:

- Exhibit C-4 of the Application and Pre-filed Evidence

**(b) Is the SME's proposal regarding service level credits reasonable and appropriate?**

The Parties agree to the SME's proposal for the allocation of service level credits received from the Operational Service Provider set forth in section 7.6 of the SME/LDC Agreement filed with the Board on January 31, 2013 and attached to this Settlement Proposal as Appendix "D".

The following evidence supports this agreement:

- Exhibit C-4 of the Application and Pre-filed Evidence
- Transcript of the oral hearing held on September 21, 2012
- The SME's letter to the Board dated October 19, 2012
- Revised SME/LDC Agreement filed January 31, 2013

## **MATTERS RELATING TO EB-2012-0211**

**(a) Is the EDA's proposed methodology for levying and collecting the SMC from LDC customers reasonable and appropriate?**

The Parties agree that the EDA's proposed methodology for levying and collecting the SMC from LDC Residential and General Service <50 kW customers is reasonable and appropriate.

The following evidence supports this agreement:

- Exhibit C-2 and C-3 of the Application and Pre-filed Evidence
- EDA Evidence filed October 19, 2012
- EDA Responses to Information Requests of the Parties filed November 2, 2012

**(b) Is the EDA's proposal for the collection of the SMC by LDCs to be implemented by way of a generic rate order applicable to all LDCs reasonable and appropriate?**

The Intervenors agree that the EDA's proposal for LDCs to collect a monthly charge from their customers by way of a generic rate order applicable to all LDCs listed in the Board's annual *Yearbook of Electricity Distributors*, to be made effective on the same date and at the same level as the SMC charge to be levied by the SME, is reasonable and appropriate.

The following evidence supports this agreement:

- EDA Evidence filed October 19, 2012
- EDA Responses to Information Requests of the Parties filed November 2, 2012

**(c) Is the EDA's proposal that notwithstanding the implementation of a generic rate order, each LDC may apply to the Board if it so wishes for an alternative recovery mechanism, reasonable and appropriate?**

There is no settlement on this issue.

The following evidence contains particulars of this issue:

- EDA Evidence filed October 19, 2012
- EDA Responses to Information Requests of the Parties filed November 2, 2012

**(d) Is the EDA's proposal for the approval in a generic rate order of LDC deferral accounts to record the over- or under-collection of SME costs from each customer class (i.e. Residential and General Service <50kw customers) reasonable and appropriate?**

The Intervenor agree that LDCs shall maintain separate deferral accounts for Residential and General Service <50 kw customers to track over- and under-collection of revenue in respect of SME costs.

The following evidence supports this agreement:

- EDA Evidence filed October 19, 2012
- EDA Responses to Information Requests of the Parties filed November 2, 2012

## Appendix A - Revenue Requirement

	Actual Costs	Forecast Costs					
Phase	2006 to 2012	2013	2014	2015	2016	2017	Total 2006 to 2017
Phase 1 (Inception to Contract)	\$ 1,595,605						\$ 1,595,605
Phase 2 (MDM/R Delivery)	\$ 18,720,679						\$ 18,720,679
<b>Phase 3 (MDM/R Operation)</b>							
IESO Project Team Costs	\$ 11,790,083	\$ 6,150,057	\$ 5,659,284	\$ 5,818,047	\$ 5,992,589	\$ 6,172,366	\$ 41,582,425
External Fees and Expenses	\$ 1,275,066	\$ 521,224	\$ 497,658	\$ 512,587	\$ 527,965	\$ 543,804	\$ 3,878,304
Regulatory Process: Licensing & Cost Recovery	\$ 164,746	\$ 100,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 150,000	\$ 444,746
IESO Communications Support	\$ 743,030	\$ 51,500	\$ 53,045	\$ 54,636	\$ 56,275	\$ 57,964	\$ 1,016,450
<b>Total IESO Costs</b>	\$ 13,972,925	\$ 6,822,780	\$ 6,219,986	\$ 6,395,271	\$ 6,586,829	\$ 6,924,134	\$ 46,921,925
Vendor Base Contract	\$ 38,037,811	\$ 14,320,141	\$ 14,073,879	\$ 14,311,101	\$ 13,911,384	\$ 13,448,159	\$ 108,102,475
Vendor Base Contract - PST	\$ 1,204,645	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,204,645
Vendor Change Orders and Infrastructure Improvements	\$ (899,841)	\$ 2,141,873	\$ 951,873	\$ -	\$ -	\$ -	\$ 2,193,905
Software Licenses	\$ 619,545	\$ 406,914	\$ 1,345,784	\$ 1,546,099	\$ 1,528,059	\$ 1,606,135	\$ 7,052,536
LDC Testing Facilities	\$ 771,050	\$ 681,750	Included in Vendor Base Contract above				\$ 1,452,800
<b>Total Vendor Costs</b>	\$ 39,733,211	\$ 17,550,678	\$ 16,371,536	\$ 15,857,200	\$ 15,439,443	\$ 15,054,294	\$ 120,006,361
OSP Procurement	\$ 264,437	\$ 20,000	\$ -	\$ -	\$ -	\$ -	\$ 284,437
SME Corporate Costs	\$ 18,213	\$ 97,069	\$ -	\$ -	\$ -	\$ -	\$ 115,282
<b>Total Phase 3 Costs</b>	\$ 53,988,785	\$ 24,490,527	\$ 22,591,523	\$ 22,252,470	\$ 22,026,272	\$ 21,978,428	\$ 167,328,005
<b>Phase 4 (Accelerated TOU Rollout Plan &amp; OEB Mandate)</b>	\$ 8,790,452						\$ 8,790,452



<b>MDM/R Changes and Initiatives</b>	<b>Actual '06 to '12</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total 2006 to 2017</b>
Provision for MDM/R Upgrades, Maintenance and Changes	\$ 0	\$ 1,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 21,000,000
Release 7.2, MC 2011, MC 2012 Part 1 Solution	\$ 9,679,472						\$ 9,679,472
Measurement Canada 2012 Solution and Required Upgrades	\$ 3,521,025	\$ 2,091,890					\$ 5,612,915
<b>Total MDM/R Changes and Initiatives</b>	<b>\$ 13,200,498</b>	<b>\$ 3,091,890</b>	<b>\$ 5,000,000</b>	<b>\$ 5,000,000</b>	<b>\$ 5,000,000</b>	<b>\$ 5,000,000</b>	<b>\$ 36,292,388</b>
<b>SUB-TOTAL</b>	<b>\$ 96,296,019</b>	<b>\$ 27,582,417</b>	<b>\$ 27,591,523</b>	<b>\$ 27,252,470</b>	<b>\$ 27,026,272</b>	<b>\$ 26,978,428</b>	<b>\$ 232,727,129</b>
<b>Financing Costs</b>	<b>\$ 3,853,010</b>	<b>\$ 1,836,126</b>	<b>\$ 1,830,755</b>	<b>\$ 3,047,698</b>	<b>\$ 3,058,931</b>	<b>\$ 2,282,252</b>	<b>\$ 15,908,772</b>
<b>TOTAL</b>	<b>\$ 100,149,029</b>	<b>\$ 29,418,543</b>	<b>\$ 29,422,278</b>	<b>\$ 30,300,169</b>	<b>\$ 30,085,202</b>	<b>\$ 29,260,680</b>	<b>\$ 248,635,901</b>

## Appendix B - Budget Revenues

Cost recovery period: May 1, 2013 to October 31, 2018

2013	2014	2015	2016	2017	2018	Total
\$ 30,137,685	\$ 45,206,527	\$ 45,206,527	\$ 45,206,527	\$ 45,206,527	\$ 37,672,106	\$ 248,635,901



## Appendix C - Sample Annual Cost Report

	Year: 2013			
Budget Category	Budget	Actual [SAMPLE]	Variance (Budget - Actual)	Explanation
<b>Phase 3 (MDM/R Operation)</b>				
IESO Project Team Costs	\$ 6,150,057	\$ 6,150,057	\$ -	
IESO Staff Costs	\$ 3,375,026	\$ 3,375,026	\$ -	
Contractor Costs	\$ 2,775,030	\$ 2,775,030	\$ -	
External Fees and Expenses	\$ 521,224	\$ 521,224	\$ -	
Regulatory Process: Licensing & Cost Recovery	\$ 100,000	\$ 100,000	\$ -	
IESO Communications Support	\$ 51,500	\$ 51,500	\$ -	
<b>Total IESO Costs</b>	<b>\$ 6,822,780</b>	<b>\$ 6,822,780</b>	<b>\$ -</b>	
Vendor Base Contract	\$ 14,320,141	\$ 14,320,141	\$ -	
Vendor Change Orders and Infrastructure Improvements	\$ 2,141,873	\$ 2,141,873	\$ -	
Software Licenses	\$ 406,914	\$ 406,914	\$ -	
LDC Testing Facilities	\$ 681,750	\$ 681,750	\$ -	
<b>Total Vendor Costs</b>	<b>\$ 17,550,678</b>	<b>\$ 17,550,678</b>	<b>\$ -</b>	
OSP Procurement	\$ 20,000	\$ 20,000	\$ -	
SME Corporate Costs	\$ 97,069	\$ 97,069	\$ -	
<b>Total Phase 3 Costs</b>	<b>\$ 24,490,527</b>	<b>\$ 24,490,527</b>	<b>\$ -</b>	

<b>MDM/R Changes and Initiatives</b>	<b>Budget</b>	<b>Actual [SAMPLE]</b>	<b>Variance (Budget - Actual)</b>	<b>Explanation</b>
Provision for MDM/R Upgrades, Maintenance and Changes	\$ 1,000,000	\$ 1,000,000	\$ -	
Measurement Canada 2012 Solution and Required Upgrades	\$ 2,091,890	\$ 2,091,890	\$ -	
Authorized Changes and Initiatives			\$ -	
<b>Total MDM/R Changes and Initiatives</b>	<b>\$ 3,091,890</b>	<b>\$ 3,091,890</b>	<b>\$ -</b>	
<b>SUB-TOTAL</b>	<b>\$ 27,582,417</b>	<b>\$ 27,582,417</b>	<b>\$ -</b>	
<b>Financing Costs</b>	<b>\$ 1,836,126</b>	<b>\$ 1,836,126</b>	<b>\$ -</b>	
<b>TOTAL</b>	<b>\$ 29,418,543</b>	<b>\$ 29,418,543</b>	<b>\$ -</b>	

**SMART METERING AGREEMENT FOR DISTRIBUTORS**

**THIS AGREEMENT** dated this • day of •, 20•.

BETWEEN :

**[INSERT DISTRIBUTOR NAME]**, a distributor licensed by the Ontario Energy Board under the *Ontario Energy Board Act, 1998* (Ontario)

(the “**Distributor**”)

and

**[INSERT NAME OF ORGANIZATION DESIGNATED AS THE SMART METERING ENTITY]**, designated as the Smart Metering Entity under the *Electricity Act, 1998* (Ontario)

(the “**SME**”)

**WHEREAS:**

- A. The **[INSERT NAME]** has been designated as the Smart Metering Entity under the *Electricity Act, 1998* (Ontario) for the purpose of co-ordinating the implementation of the Government of Ontario’s Smart Metering Initiative, a key component of which is the MDM/R.
- B. The functions required for the MDM/R were established by the Ministry of Energy and set out in the “Meter Data Management and Repository, Functional Specification, Issue 2.0, November 29, 2006”.
- C. The MDM/R will be utilized to collect, manage, store and retrieve information related to consumers’ use of electricity in Ontario and the SME will, subject to any requirements prescribed by regulation and the protection of privacy, provide and promote non-discriminatory access to that information.
- D. Pursuant to the procurement process managed by the Independent Electricity System Operator, IBM Canada Limited was engaged on December 5, 2006, as an Operational Service Provider for the design, engineering, delivery, installation, configuration, integration, implementation and operation of the MDM/R.

- E. The MDM/R Agreement between the SME and IBM Canada Limited establishes the service levels and certain other terms and conditions under which MDM/R services are provided to distributors.
- F. The OEB's Distribution System Code provides that a distributor shall, upon being requested to do so, enter into an agreement with the SME, in a form approved by the OEB, which sets out the respective roles and responsibilities of the distributor and the SME in relation to smart metering and the information required to be exchanged to allow for the conduct of their respective roles and responsibilities.
- G. The roles and responsibilities of the SME and the Distributor set out under this Agreement reflect the regulatory framework under which the Smart Metering Initiative is being implemented, including the role of the SME in administering the provision of services to distributors pursuant to all MDM/R Agreements.

**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 Definitions:** In this Agreement, the following terms and expressions shall have the meanings set out below unless the context otherwise requires:
- 1.1.1 **"Agreement"** means this Agreement, including the Schedules to this Agreement.
  - 1.1.2 **"AMI"** means the Distributor's advanced metering infrastructure, including the smart meter, Advanced Metering Communication Device (AMCD), Local Area Network (LAN), Advanced Metering Regional Collector (AMRC), Advanced Metering Control Computer (AMCC), Wide Area Network (WAN), and related hardware, software, and connectivity required for a fully functioning data collection system.
  - 1.1.3 **"Authorized Agent"** has the meaning ascribed to it in section 2.7.
  - 1.1.4 **"Billing Quantity Data"** means smart metering data that is ready for use in billing consumers for their consumption or use of electricity based on the time of day when the electricity was consumed or used;
  - 1.1.5 **"Distributor"** has the meaning ascribed to it above and includes the Distributor's directors, officers, employees, contractors, agents, advisors and consultants.
  - 1.1.6 **"Market Rules"** means the Market Rules for the Ontario Electricity Market.

- 1.1.7 **“MDM/R”** means the Meter Data Management and Repository developed by the SME within which Smart Metering Data is processed to produce Billing Quantity Data and such data is stored for future use.
- 1.1.8 **“MDM/R Agreements”** means the Meter Data Management and Repository Development, Hosting and Support Agreement dated December 5, 2006 between the SME and IBM Canada Limited, and all other agreements between the SME and an Operational Service Provider.
- 1.1.9 **“OEB”** means the Ontario Energy Board or its successor.
- 1.1.10 **“Operational Service Provider”** means IBM Canada Limited and any other party engaged by the SME, excluding the Independent Electricity System Operator, to assist with the development and operation of the MDM/R.
- 1.1.11 **“Party”** means a party to this Agreement.
- 1.1.12 **“Smart Metering Charge”** means any fee payable to the SME in respect of its role and responsibilities in respect of the Smart Metering Initiative and approved by the OEB or otherwise required by law.
- 1.1.13 **“Smart Metering Data”** means data derived from smart meters, including data related to the consumers’ consumption of electricity.
- 1.1.14 **“Smart Metering Initiative”** means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters.
- 1.1.15 **“SME”** has the meaning ascribed to it above and includes the SME’s directors, officers, employees, contractors, agents, advisors and consultants.
- 1.1.16 **“SME Steering Committee”** means the forum to represent the interests of the MDM/R service recipients to be established by the SME under section 3.2.
- 1.1.17 **“Terms of Service”** means the terms and conditions made under section 3.1.
- 1.1.18 **“VEE”** means those validation, estimating and editing services, as specified by the SME, that are performed on Smart Metering Data to identify and account for missed or inaccurate Smart Metering Data.

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

- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing a gender include any gender;
- 1.2.3 other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

- 1.2.4 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 or collegiate;
- 1.2.5 a reference to a thing includes a part of that thing;
- 1.2.6 a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this Agreement;
- 1.2.7 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 it 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;
- 1.2.8 a reference to a document or provision of a document, including this Agreement and any externally referenced documents, 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;
- 1.2.9 a reference to sections of this Agreement or of any externally referenced documents separated by the word “to” (i.e., “sections 1.1 to 1.4”) shall be a reference to the sections inclusively; and
- 1.2.10 the expression “including” means including without limitation, the expression “includes” means includes without limitation and the expression “included” means included without limitation.
- 1.3 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**

### **ROLES AND RESPONSIBILITIES**

- 2.1 Compliance with Applicable Law:** The Parties shall comply with the provisions of all applicable laws and any codes issued by the OEB that relate to the Smart Metering Initiative.
- 2.2 Roles and Responsibilities of the SME:** The SME shall:
- 2.2.1 administer the ongoing development of the MDM/R and any associated SME infrastructure required to fulfill the Smart Metering Initiative;

- 2.2.2 co-ordinate with other bodies having regulatory functions with respect to the Smart Metering Initiative, including the OEB and the Ministry of Energy and Infrastructure, as appropriate;
- 2.2.3 conduct such testing as the SME determines appropriate of the MDM/R and the interfaces between the MDM/R and the Distributor's systems prior to authorizing the Distributor to operate using the MDM/R and in advance of a modification to the MDM/R;
- 2.2.4 cooperate with reasonable testing by the Distributor of the interfaces between the MDM/R and the Distributor's systems requested by the Distributor, including reasonable testing by the Distributor of the interoperation of the Distributor's systems with the MDM/R;
- 2.2.5 provide reasonable and effective training to staff of the Distributor and the Distributor's Authorized Agent on the MDM/R and any associated infrastructure provided by the SME to support the interoperation of the Distributor's systems with the MDM/R;
- 2.2.6 subject to any requirements prescribed by regulation, receive Smart Metering Data, and such other information required by the SME to fulfill its obligations in respect of the Smart Metering Initiative, from the Distributor or the Distributor's Authorized Agent, conduct the applicable VEE processes for such information, and transmit Billing Quantity Data to the Distributor or the Distributor's Authorized Agent in a form that allows the Distributor to bill in accordance with an OEB approved tariff;
- 2.2.7 provide the Distributor with remote access to the MDM/R on a non-discriminatory basis for the purposes of:
  - 2.2.7.1 retrieving and reviewing the Distributor's Smart Metering Data and Billing Quantity Data for any business purpose of the Distributor; or
  - 2.2.7.2 editing the Distributor's Smart Metering Data and other information the Distributor is authorized to edit;

provided that the SME may establish reasonable restrictions on remote access to safeguard the operational integrity of the MDM/R, ensure performance of the MDM/R in accordance with the applicable service levels prescribed in the Terms of Service, perform maintenance on the MDM/R, or resolve an outage of the MDM/R;
- 2.2.8 provide ongoing technical support to the Distributor in relation to the MDM/R and any associated SME infrastructure required to fulfill the Smart Metering Initiative;
- 2.2.9 ensure that Smart Metering Data transmitted to the SME by the Distributor is stored in the MDM/R for 26 months and available to the Distributor for 10 years in an archived format, or as otherwise required by law;



- 2.2.10 perform its obligations under the Terms of Service and make best efforts to ensure that the MDM/R services meet the applicable service levels prescribed in the Terms of Service;
- 2.2.11 work with stakeholders to achieve continuous service through any transition to any subsequent agreement or agreements relating to MDM/R operations;
- 2.2.12 carry out such other roles and responsibilities as are required to fulfill the Smart Metering Initiative.

**2.3 Smart Metering Charge:** The SME shall invoice the Distributor for and collect the Smart Metering Charge in accordance with settlement procedures identical to those set forth in sections 6.1 to 6.15 of Chapter 9 of the Market Rules *mutatis mutandis*. In any application to the OEB to set the Smart Metering Charge, the SME shall request that the OEB permit the Distributor to pass through the Smart Metering Charge to consumers.

**2.4 Audit of the MDM/R:** The SME shall cause independent audits of the MDM/R and the MDM/R internal control environment, including relevant controls performed by the SME and the MDM/R Operational Service Providers, to be conducted annually by a nationally recognized audit firm, the scope and objectives of such audits to be relevant to a user organization's internal control as it relates to an audit of financial statements. The audit shall be conducted in accordance with the standards or equivalent standards to those established by the Canadian Institute of Chartered Accountants for audits of controls at a service organization. The audit period shall be at minimum six months in duration, concluding not more than 3 months from the end of the calendar year. The audit report shall be made available to users of the report no later than November 15 of each calendar year. This report shall hereinafter be referred to as the "first audit report". As early as possible and no later than January 15 of the following calendar year, the SME shall issue a management representation letter from the SME Chief Financial Officer stating that controls continue to be in place and working effectively and that there is no change in the control environment between the date of the audit report and December 31, or, at the SME's option in lieu of the representation letter, a second audit report covering the eight month period up to and including November 30 (hereinafter referred to as the "second audit report").

In the event of any qualification or significant exception in an audit report, at the request of the Distributor and subject to the approval of an officer of the SME or a committee of the SME Board or the SME Board, the SME shall cause to have specified procedures performed by a nationally recognized audit firm. The approval of this request shall not be unreasonably withheld. The Distributor's request shall include the specified procedures requested by their external auditor to be performed by the SME's auditor. Notwithstanding the SME's requirement for approval by an officer of the SME or a committee of the SME Board or the SME Board, the SME shall (a) respond to the Distributor's request in writing within 5 business days of receipt of their request with the specified procedures that the SME shall cause to have performed and (b) advise when the results of the specified procedures will be provided to the Distributor. The SME will use commercially reasonable efforts to have the results of the specified



procedures provided to the Distributor within 5 weeks of the approval of the request for specified procedures pertaining to the first audit report and within 2 weeks of the approval of the request for specified procedures pertaining to the second audit report, if applicable, or as otherwise agreed between the Distributor and the SME. The SME may consolidate similar requests from multiple Distributors, provided that such consolidation does not negatively impact on the timing of any of the approvals or the delivery of the results of the specified procedures.

In the event of any qualification or significant exception in the audit report, and where all reasonable means have been exhausted with specified procedures to meet Distributors' financial reporting requirements, Distributors required by law to file audited financial statements with a securities commission and comply with National Instrument 52-109 or equivalent shall have the right to have their financial statement auditor conduct audit procedures of the MDM/R and MDM/R internal control environment, subject to all of the following:

- The scope and objectives of the audit are limited to supporting the audit of and/or certification of Distributor's financial statements;
- Reasonable costs of the audit, including costs of the SME and the MDM/R Operational Service Providers to support the audit, shall be borne by the Distributor; and
- Distributor's external auditor agrees to the SME and MDM/R Operational Service Providers' non-disclosure and information confidentiality terms and conditions.

The SME shall develop and execute a remediation plan to address significant exceptions on a timely basis.

**2.5 Interactions with Customers:** The Distributor shall be solely responsible for interacting with its customers in respect of individual customer data originating from the MDM/R or any individual customer information derived from the MDM/R regardless of whether such data is presented to the customer by the Distributor, the SME or their respective agents.

**2.6 Roles and Responsibilities of the Distributor:** The Distributor shall:

- 2.6.1 ensure that its AMI complies with all of the applicable functional and technical specifications published by the SME with respect to the Smart Metering Initiative and conduct such testing of its AMI as required by the SME to demonstrate such compliance;
- 2.6.2 participate in any testing of the MDM/R and the interfaces between the MDM/R and the Distributor's systems as required by the SME;
- 2.6.3 certify to the SME, in a form acceptable to the SME, that the Distributor has completed any testing required by the SME and is ready to operate using the MDM/R, its AMI and any associated infrastructure required to fulfill the Smart Metering Initiative;

- 2.6.4 transmit to the SME Smart Metering Data and any other information required by the SME under section 2.2.6, retain such information for a minimum of 5 days, and re-transmit such information to the SME upon request;
  - 2.6.5 perform its obligations under the Terms of Service as an MDM/R service recipient; and
  - 2.6.6 carry out such other roles and responsibilities as are required to fulfill the Smart Metering Initiative.
- 2.7 **Authorized Agent Permitted:** On written notice to the SME, the Distributor may authorize one or more persons to act on the Distributor's behalf as an agent ("**Authorized Agent**") in any or all of the matters related to the Smart Metering Initiative and this Agreement. The authorization shall be in the form specified by the SME. The Distributor is responsible for ensuring that its Authorized Agent is aware of and complies with the terms and conditions of this Agreement.

### ARTICLE 3

#### TERMS OF SERVICE

- 3.1 **Terms of Service:** The SME shall make Terms of Service for the management and operations of the MDM/R under this Agreement and shall publish the Terms of Service on its website.
- 3.2 **Mandate of the SME Steering Committee:** The SME shall establish the SME Steering Committee as a forum to represent the interests of stakeholders. The SME steering committee will be provided with an opportunity to:
- 3.2.1 provide input in the ongoing development of the Terms of Service and the MDM/R manuals and procedures;
  - 3.2.2 provide input on the SME's provision of MDM/R services and the adherence to the committed service levels as prescribed in the Terms of Service;
  - 3.2.3 consider amendment proposals forwarded by the SME, MDM/R service recipients, or initiated by the SME Steering Committee; and
  - 3.2.4 participate in the consultations, when requested by the SME, on amendments to the MDM/R manuals and procedures.
- 3.3 **Composition of the SME Steering Committee:** The SME Steering Committee shall have up to 13 representatives where:
- 3.3.1 a majority of the members shall represent local distribution companies that are receiving service from the MDM/R or otherwise eligible to receive service from the MDM/R;
  - 3.3.2 following a date to be established by the SME in consultation with the Ministry of Energy and Infrastructure, up to three members shall represent retail

companies that are receiving service from the MDM/R or otherwise eligible to receive service from the MDM/R;

3.3.3 up to two members will be members-at large; and

3.3.4 one member shall represent the interests of the SME.

**3.4 Appointment of the SME Steering Committee:** Except for the members-at-large and the member representing the SME, members of the SME Steering Committee shall be appointed by the Board of Directors of the *SME* from among nominations made by persons that are receiving service from the MDM/R or otherwise eligible to receive service from the MDM/R. Distributor representatives may also be appointed from nominations submitted by the Board of Directors of the Electricity Distributors Association or any successor organization.

**3.5 Amendment to the Terms of Service:** The SME may amend the Terms of Service at any time provided that the SME establishes and follows a process by which the SME Steering Committee may first provide advice and recommendations to the SME on the amendment. When amending the Terms of Service, the SME shall consider the overall cost and schedule impacts of the proposed amendment to the SME and any parties receiving service from the MDM/R, and any anticipated impact on electricity consumers.

**3.6 Amendment Proposals:** The SME shall establish a process under which any party receiving service from the MDM/R may propose an amendment to the Terms of Service.

**3.7 Manuals and Procedures:** The SME may make and amend manuals and procedures to provide more detailed descriptions of the requirements under the Terms of Service, including any forms required under this Agreement or the Terms of Service, and shall publish any manuals and procedures made under the Terms of Service on its website.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

**4.1 Mutual Representations and Warranties:** Each Party represents and warrants to and covenants with the other Party as follows:

4.1.1 it has all the necessary corporate power to enter into and perform its obligations under this Agreement;

4.1.2 the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action and does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any charter or by-law

instruments of that Party; (ii) any contracts or instruments to which it is a party or by which it is bound; or (iii) any laws applicable to it;

4.1.3 the individual(s) executing this Agreement, and any document in connection with this Agreement, on its behalf has been duly authorized to execute this Agreement and has the full power and authority to bind the Party;

4.1.4 this Agreement constitutes a legal and binding obligation of the Party, enforceable against the Party in accordance with its terms; and

4.1.5 it holds all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform its roles and responsibilities under the Smart Metering Initiative and this Agreement.

**4.2 Representations and Warranties of the SME:** The SME represents and warrants to the Distributor that it and any Operational Service Provider have adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of its roles and responsibilities under the Smart Metering Initiative and this Agreement.

**4.3 Representations and Warranties of the Distributor:** The Distributor represents and warrants to the SME that:

4.3.1 the Distributor is a [INSERT FORM OF BUSINESS ORGANIZATION] duly [INCORPORATED/ FORMED/REGISTERED] and existing under the laws of [JURISDICTION];

4.3.2 the Distributor and any Authorized Agent has the authority under any applicable laws to provide Smart Metering Data and any other information required under section 2.2.6 to the SME; and

4.3.3 the Distributor or its Authorized Agent have adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of its roles and responsibilities under the Smart Metering Initiative and this Agreement.

## ARTICLE 5

### ACCESS TO MDM/R DATA

**5.1 Disclosure of MDM/R Data:** Subject to its OEB licence, the SME may disclose, use or reproduce any data contained in the MDM/R, including Smart Metering Data and Billing Quantity Data, for any purpose; provided that in making data available to any third party, the data shall be presented in a manner that prevents the specific data of an individual customer of the Distributor being identified with that customer or premises. If the SME is compelled by law, regulation or order of court or tribunal to disclose any data contained in the MDM/R to a third party in a manner other than as provided for under this section 5.1, the SME shall, to the extent permitted by law, provide the

Distributor with reasonable notice and the Distributor may seek a protective order or other appropriate remedy to prevent disclosure of the data.

- 5.2 Protocol for Access to MDM/R Data:** The SME shall consult with the SME Steering Committee and develop and publish a protocol setting out the procedures it will follow in providing access to MDM/R data while preventing identification of the specific data associated with an individual customer or premises.
- 5.3 Freedom of Information and Protection of Privacy Act:** The Distributor acknowledges that SME is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) and may be required by order of a court or tribunal to disclose information provided by the Distributor to SME. The SME acknowledges that the Distributor may be bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario), the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) or other such legislation and may be required by order of a court or tribunal to disclose information provided by the SME to the Distributor.

## ARTICLE 6

### INTELLECTUAL PROPERTY

- 6.1 Intellectual Property Rights:** The Distributor shall not acquire any title, beneficial ownership interests or any intellectual property rights, including any proprietary rights provided under (i) patent law, (ii) copyright law (including moral rights), (iii) trademark law, (iv) design patent or industrial design law, (v) semi-conductor chip, integrated circuit topography or mask work law, or (vi) any other statutory provision or common law principle regarding intellectual or industrial property, including trade secret law, in the MDM/R or any associated infrastructure used by the SME to fulfill the Smart Metering Initiative. Similarly, the SME shall not acquire any such title, interests or rights in respect of the Distributor's AMI, customer information systems, billing systems or any associated infrastructure used by the Distributor to fulfill those objectives.
- 6.2 Survival:** Article 6 of this Agreement shall survive the assignment, transfer or termination of this Agreement.

## ARTICLE 7

### LIABILITY AND INDEMNIFICATION

- 7.1 Limitation of Liability of the SME:** Except as provided in sections 7.5, 7.6 and 7.7, the Distributor shall have no recourse against the SME in respect of any breach of this Agreement, or any loss or damage to the Distributor, which in either case is attributable to an act or omission of any Operational Service Provider. The SME's liability to the Distributor attributable to an act or omission of the SME shall be limited to:

7.1.1 actual direct damages and in no event shall the SME be liable to the Distributor in respect of punitive, consequential or indirect damages or loss of profit, loss of data or loss of revenue; and

7.1.2 the cumulative liability of the SME to all MDM/R service recipients (including the Distributor) in connection with an act or omission of the SME under this Agreement shall not exceed an aggregate amount of \$1,000;

except as provided for in section 7.3 or to the extent that any such damages are recovered by the SME from an Operational Service Provider under section 7.6.

**7.2 Limitation of Liability of the Distributor:** The Distributor's liability to the SME attributable to an act or omission of the Distributor shall be limited to actual direct damages and in no event shall the Distributor be liable to the SME in respect of punitive, consequential or indirect damages or loss of profit, loss of data or loss of revenue. The liability of the Distributor to the SME in connection with an act or omission of the Distributor shall not exceed \$1,000.

**7.3 Indemnification:** The SME shall indemnify and hold harmless the Distributor from any and all claims, losses, liabilities, obligations, actions, judgments, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Distributor to the extent that such claims, losses, liabilities, actions, judgments, suits, costs, expenses, disbursements or damages arise out of a breach of Article 5 of this Agreement.

**7.4 Duty to Mitigate:** A Party has a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims that may be made under this Agreement.

**7.5 Cost Recovery:** The SME shall cooperate with the Distributor (acting individually or in concert with other licenced distributors that are parties to an agreement with the SME) in:

7.5.1 any proceeding before the OEB; and

7.5.2 any initiative to make a submission to, or obtain a legislative or regulatory amendment from, the Province of Ontario;

in which the Distributor seeks a change to any of its rates or charges or other appropriate relief for any of its losses or incremental costs related to any act or omission of the SME, the Operational Service Provider or a service provider of the SME. The SME shall assist in the coordination of the claim or initiative being put forward by the Distributor. Such cooperation by the SME shall include, but not be limited to, promptly providing to the Distributor and the OEB, at the request of the Distributor but at the SME's cost, accurate information, analysis, documents, and evidence. For greater certainty, the SME's obligation to provide assistance under this section shall not be limited to a cost of \$1000 by section 7.1.2.

**7.6 Reduction of Smart Metering Charge:** If an Operational Service Provider fails to meet the required service levels under an MDM/R Agreement, or otherwise breaches

an MDM/R Agreement, and that failure or breach results in a reduction of the fees payable to the Operational Service Provider by the SME, or if any amount is recovered from the Operational Service Provider in respect of any such failure or breach, then an amount equal to the reduction or recovered amount will be:

- 7.6.1 set aside by the SME as an amount owing to MDM/R service recipients in a variance account approved by the OEB;
- 7.6.2 reported to the SME Steering Committee along with any pertinent information in the possession of the SME which may assist the SME Steering Committee in determining which MDM/R service recipients were affected by the MDM/R failure or breach; and,
- 7.6.3 subject to approval of the OEB, subsequently distributed to MDM/R service recipients by the SME.

The SME shall apply to the OEB to clear the approved variance account on the earlier of (i) the date on which the balance in the variance account meets or exceeds \$2 million, or (ii) January 26, 2016. As part of its application, the SME will ask the Board to approve the allocation of service level credits amongst MDM/R service recipients as determined by the SME Steering Committee.

- 7.7 **Monitoring of the Operational Service Provider:** The SME will use commercially reasonable efforts to monitor each Operational Service Provider's performance under, and to enforce the provisions of, its MDM/R Agreement (which shall include, for greater certainty, the diligent pursuit, through legal proceedings if necessary, of any appropriate reductions of fees or recovery of any amounts owing as damages, penalties or otherwise). The Distributor may seek an order of specific performance requiring the SME to take commercially reasonable actions to enforce the provisions of an MDM/R Agreement at the SME's cost.

## ARTICLE 8

### DISPUTE RESOLUTION

- 8.1 **Dispute Resolution:** Subject to section 8.3, the Parties shall attempt to settle any dispute in connection with this Agreement or the Smart Metering Initiative through good faith negotiations. If the Parties are unable to resolve the dispute through good faith negotiation, either Party may apply to the OEB for determination of the dispute. A Party shall provide written notice to the other Party of its intention to apply to the OEB for determination of the dispute at least ten (10) business days before filing any application materials with the OEB.
- 8.2 **Limitation Period:** Subject to section 8.3, a Party shall commence any proceeding in respect of a dispute under this Agreement or related to the Smart Metering Initiative within two years of the earlier of:

8.2.1 the date on which the claim is discovered; or

8.2.2 the date on which this Agreement is terminated under section 11.1.

- 8.3 Smart Metering Charge:** Any dispute between the Parties in respect of the calculation of the Smart Metering Charge shall be determined in accordance with a dispute resolution procedure identical to that set forth in section 2 of Chapter 3 of the Market Rules *mutatis mutandis*. The Distributor shall commence any proceeding in respect of the calculation of the Smart Metering Charge invoiced to it by the SME within the applicable limitation period set forth in section 2.5.1A.3 or 2.5.1A.4 of Chapter 3 of the Market Rules.

## ARTICLE 9

### FORCE MAJEURE

- 9.1 Force Majeure:** If either Party is unable to satisfy any of its obligations under this Agreement due to causes beyond the Party's reasonable control, provided that the Party makes all reasonable efforts to avoid, or if unavoidable, to correct the reason for such delay or failure and gives the other Party prompt notice of such delay or failure, then such Party shall be excused and relieved from its obligation to satisfy such obligation for so long as the event continues and for such reasonable period of time thereafter as may be necessary for the Party to resume performance of the obligation. For the avoidance of doubt, "causes beyond the Party's reasonable control" include an event of fire, flood, earthquake, element of nature, explosions, acts of God, acts of war, terrorism, riots, civil or public disorders or disobedience, strikes, lock-outs, labour disruptions, acts of vandalism, sabotage, or other unlawful acts, and any other similar event beyond the commercially reasonable control of the Party.

## ARTICLE 10

### AMENDMENT AND ASSIGNMENT

- 10.1 Amendment Generally:** Except as otherwise provided in this Agreement, no amendment to this Agreement will be effective until approved by the OEB. A Party may apply to the OEB to amend this Agreement at any time provided that the Party has first consulted with the SME Steering Committee on the merits of the proposed amendment.
- 10.2 Amendment to Section 4.3:** The Distributor may amend the Distributor's corporate information provided under section 4.3 at any time without the approval of the OEB.
- 10.3 Amendment to Schedule "A":** The Distributor or the SME may amend their respective nominated representatives for official notifications listed in Schedule "A" at any time without the approval of the OEB.
- 10.4 Assignment Generally:** Except as provided for in section 11.2, neither Party may assign its rights and obligations under or transfer any of its interest in this Agreement



without the prior consent of the other Party, which consent shall not be unreasonably withheld. An assignment under this section does not require the approval of the OEB.

## ARTICLE 11

### TERM AND TERMINATION

**11.1 Term:** This Agreement is effective as of May 1, 2013. Unless otherwise extended by order of the OEB, this Agreement shall terminate on January 26, 2016.

**11.2 Termination of the Smart Metering Entity Role:** If during the term of this Agreement, the SME is no longer designated under the *Electricity Act, 1998* (Ontario) as the Smart Metering Entity, this Agreement shall be assigned to and assumed by the successor Smart Metering Entity.

**11.3 Delivery of Historical Data:** In the event that MDM/R services are no longer being provided under either this Agreement or any subsequent agreement or agreements relating to MDM/R operations, the SME shall, at the request of the Distributor, obtain and deliver to the Distributor the Distributor's Smart Metering Data and Billing Quantity Data stored in the MDM/R. This section 11.3 shall survive the assignment, transfer or termination of this Agreement.

**11.4 Deemed Release of the SME:** Subject to section 6.2, the Distributor will be deemed to release the SME from all obligations, liabilities, claims and demands against SME in respect of the Smart Metering Initiative and this Agreement, whether known or unknown, upon the earlier of:

11.4.1 two years after termination of this Agreement; or

11.4.2 the assumption of any obligations, liabilities, claims and demands against SME in respect of the Smart Metering Initiative and this Agreement by another entity in accordance with section 11.2.

## ARTICLE 12

### MISCELLANEOUS

**12.1 No Agency or Partnership:** The Parties do not intend that any agency or partnership be created between them by this Agreement.

**12.2 No Warranty:** Except as specifically set forth in this Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter, including warranties or conditions of merchantable quality or fitness for a particular purpose.

**12.3 Successors and Assigns:** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

**12.4 Severability:** Any provision of this Agreement that is invalid or unenforceable shall 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.

- 12.5 Notices:** Any notice or other communication required or permitted to be given or made under this Agreement shall be sent by courier or other form of personal delivery, by prepaid first class mail, by facsimile or electronic mail and be addressed to the other Party in accordance with the contact information listed in Schedule “A” of this Agreement.
- 12.6 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
- 12.7 Conflict or Inconsistency:** In the event of a conflict or inconsistency between this Agreement and the provisions of the Terms of Service, this Agreement shall prevail. In the event of a conflict or inconsistency between this Agreement and any code issued by the OEB under section 70.1 of the *Ontario Energy Board Act* (Ontario), the code shall prevail.
- 12.8 Amendment to the Market Rules:** If the SME proposes to or receives a proposal to amend any provision of the Market Rules incorporated in this Agreement by reference, the SME shall provide the Distributor with reasonable notice of the proposed amendment and identify what impact the amendment will have upon this Agreement.
- 12.9 Waiver:** No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof. No provision of this Agreement may be waived except in writing by a Party at its sole discretion, and a waiver on any occasion shall not act as a waiver or bar to the enforcement of the rights of a Party with respect to any other breach or the same breach on any other occasion.
- 12.10 Entire Agreement:** This Agreement represents the complete agreement between the Parties and supersedes all prior communications, understandings and agreements between the Parties, whether written, oral, expressed or implied.
- 12.11 Counterparts:** This Agreement may be executed by the Parties by facsimile or electronic signature and in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument.

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

**[INSERT DISTRIBUTOR NAME]**

By: \_\_\_\_\_

Name:

Title:

**[INSERT NAME OF SMART METERING  
ENTITY]**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A"**  
**NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS**

**SME**

Name of SME Representative:	
Title:	
Address:	
City/Province/Postal Code	
Email address:	
Phone:	
Fax:	

**Distributor**

Name of Distributor Representative:	
Title:	
Address:	
City/Province/Postal Code	
Email address:	
Phone:	
Fax:	