

HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF FINANCE

- and -

ONTARIO POWER GENERATION INC.

- and -

EACH OF OPG DARLINGTON INC., OPG DARLINGTON WASTE INC., OPG
PICKERING INC., OPG PICKERING WASTE INC., OPG-HURON A INC., OPG-
HURON B INC., OPG WASTE INC. and OPG-HURON COMMON FACILITIES INC.

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ONTARIO NUCLEAR FUNDS AGREEMENT
AS AMENDED JULY 7, 2003 AND OCTOBER 28, 2004

OFFICE CONSOLIDATION

As of April 1, 1999

November 2004 consolidation

November 2004 consolidation

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Schedule 3.3.1	-	Summary of 1999 Estimated Used Fuel Eligible Costs
Schedule 3.6	-	Used Fuel Segregated Fund Amended Payment Schedule
Schedule 3.6.1		Procedures for Determining Payments by OPG and the OPG Nuclear Subsidiaries to the Used Fuel Segregated Fund
Schedule 4.3	-	Summary of 1999 Estimated Decommissioning Eligible Costs
Schedule 4.6	-	Decommissioning Segregated Fund Original or Amended Payment Schedule
Schedule 4.6.1	-	Procedures for Determining Payments by OPG and the OPG Nuclear Subsidiaries to the Decommissioning Segregated Fund
Schedule 6.1	-	Form of Commitment in Lieu
Schedule 11.2	-	Dispute Resolution Procedure

ONTARIO NUCLEAR FUNDS AGREEMENT

THIS AGREEMENT is made as of the 1st day of April, 1999,

A M O N G:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as
represented by the Minister of Finance

(the "Province")

- and -

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

("OPG")

- and -

Each of **OPG DARLINGTON INC., OPG DARLINGTON WASTE
INC., OPG PICKERING INC., OPG PICKERING WASTE INC.,
OPG-HURON A INC., OPG-HURON B INC., OPG WASTE INC.
and OPG-HURON COMMON FACILITIES INC.,** each a
corporation incorporated under the laws of Ontario

(each of whom is an OPG Nuclear Subsidiary as herein defined)

All capitalized terms shall have the meanings attributed to them in this Agreement.

WHEREAS:

- A. OPG and the OPG Nuclear Subsidiaries, collectively, are the owners and/or the operators of the Stations and Other Facilities.
- B. The operation of the Stations and Other Facilities produces Nuclear Waste which must be safely managed and eventually disposed of in accordance with

the Approved Reference Plans in effect at the time in question and in compliance with Applicable Law.

- C. The Stations and Other Facilities must, in due course, be Permanently Shutdown and Decommissioned in accordance with Applicable Law and the requirements of Applicable Regulators.
- D. The Parties have agreed to enter into this Ontario Nuclear Funds Agreement (a) to ensure that sufficient funds are accumulated or otherwise are readily available to pay for the costs of Managing Nuclear Waste and Decommissioning each of the Stations and Other Facilities; (b) to limit the financial exposure that OPG and the OPG Nuclear Subsidiaries face with respect to increases in the cost of Managing Used Fuel resulting from changes in Approved Reference Plans for Nuclear Waste Management; and (c) to permit OPG and the OPG Nuclear Subsidiaries to meet the requirements for a financial guarantee under the *Nuclear Safety and Control Act* (Canada).
- E. Concurrently with this Agreement becoming effective, the OEFC Payment will have been made to the Decommissioning Segregated Fund and OPG will have made the Payments to each of the Used Fuel Segregated Fund and the Decommissioning Segregated Fund contemplated by this Agreement.
- F. The Province has agreed, subject to the provisions of this Agreement, to provide the one or more Provincial Guarantees as required from time to time.
- G. OPG and the OPG Nuclear Subsidiaries have agreed to make Payments to each of the Segregated Funds, subject to and in accordance with the terms of this Agreement and each of the Used Fuel Segregated Fund Custodial Agreement and the Decommissioning Segregated Fund Custodial Agreement, as applicable, so that when combined, in the case of the Used Fuel Segregated Fund, with a return on the assets of the Used Fuel Segregated Fund equal to the Discount Rate and, in the case of the Decommissioning Segregated Fund, with the return on the assets of the

Decommissioning Segregated Fund, there will be sufficient assets in the applicable Segregated Fund to pay, when due, all Used Fuel Eligible Costs and all Decommissioning Eligible Costs, as the case may be.

- H. Nuclear Legislation currently requires OPG to periodically prepare and submit for approval by the Applicable Regulator under Nuclear Legislation Reference Plans for Nuclear Waste Management and for Decommissioning the Stations and Other Facilities.
- I. The liability of the Province for Provincial Payments to the Used Fuel Segregated Fund under the terms of this Agreement is based on the assumption that the total number of Used Fuel Bundles discharged and projected to be discharged from all Stations will be 2,230,000 (the Used Fuel Bundle Threshold). OPG and the OPG Nuclear Subsidiaries shall be obligated to pay all Incremental Costs, and to make Payments in Cash to the Used Fuel Segregated Fund in an amount equal to the aggregate of such Incremental Costs, at the times and in the manner provided for in this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the Parties), the Parties agree as follows:

**Article 1 -
INTERPRETATION**

1.1 Definitions

In this Agreement capitalized terms have the meanings set out in Schedule 1.1.

1.2 Schedules

The following are the schedules attached to this Agreement (as amended, supplemented, replaced and restated from time to time as provided for in this Agreement or otherwise agreed to by the Parties hereto) each of which shall be deemed to be an integral part of this Agreement:

Schedule 1	OPG Nuclear Subsidiaries
Schedule 1.1	Definitions
Schedule 3.3	Used Fuel Segregated Fund Original Payment Schedule
Schedule 3.3.1	Summary of 1999 Estimated Used Fuel Eligible Costs
Schedule 3.6	Used Fuel Segregated Fund Amended Payment Schedule
Schedule 3.6.1	Procedures for Determining Payments by OPG and the OPG Nuclear Subsidiaries to the Used Fuel Segregated Fund
Schedule 4.3	Summary of 1999 Estimated Decommissioning Eligible Costs
Schedule 4.6	Decommissioning Segregated Fund Original or Amended Payment Schedule
Schedule 4.6.1	Procedures for Determining Payments by OPG and the OPG Nuclear Subsidiaries to the Decommissioning Segregated Fund
Schedule 6.1	Form of Commitment in Lieu
Schedule 11.2	Dispute Resolution Procedure

Article 2 -
OWNERSHIP, SEGREGATION AND
MANAGEMENT OF THE SEGREGATED FUNDS

2.1 General

- 2.1.1 Owner of the Segregated Funds. Unless otherwise required by Applicable Law (including the *Nuclear Fuel Waste Act* (Canada), if and when enacted) or otherwise agreed in writing with the Province, OPG shall at all times be the owner of each of the Segregated Funds, subject to the security interests granted by OPG in favour of the Province contemplated by sections 3.11 and 4.8 and to the respective provisions of the applicable Segregated Fund Management Agreements and the Segregated Fund Custodial Agreements.
- 2.1.2 Segregation of Used Fuel Segregated Fund Assets, Etc. The assets constituting the Used Fuel Segregated Fund shall at all times be kept separate and apart from all other property and assets of OPG, including the assets constituting the Decommissioning Segregated Fund. The Used Fuel Segregated Fund shall be subject to the terms of each of the Used Fuel Segregated Fund Management Agreement and the Used Fuel Segregated Fund Custodial Agreement in effect from time to time. The rights and obligations of the Used Fuel Segregated Fund Custodian shall be governed by the Used Fuel Segregated Fund Custodial Agreement. The rights and obligations of each Used Fuel Segregated Fund Manager shall be governed by its respective Used Fuel Segregated Fund Management Agreement.
- 2.1.3 Segregation of Decommissioning Segregated Fund Assets, Etc. The assets constituting the Decommissioning Segregated Fund shall at all times be kept separate and apart from all other property and assets of OPG, including the assets constituting the Used Fuel Segregated Fund. The Decommissioning Segregated Fund shall at all times be subject to the terms of each of the Decommissioning Segregated Fund Management Agreement and the Decommissioning Segregated Fund Custodial Agreement in effect from time

- to time. The rights and obligations of the Decommissioning Segregated Fund Custodian shall be governed by the Decommissioning Segregated Fund Custodial Agreement. The rights and obligations of each Decommissioning Segregated Fund Manager shall be governed by its respective Decommissioning Segregated Fund Management Agreement.
- 2.1.4 No Commingling. Each of the Used Fuel Segregated Fund and the Decommissioning Segregated Fund shall be maintained as a separate and distinct fund. Save for any transfer of assets expressly permitted by this Agreement, the assets of the Segregated Funds shall in no circumstances be commingled. Each of the Used Fuel Segregated Fund Custodian and the Decommissioning Segregated Fund Custodian shall open and maintain accounts with one or more financial institutions in accordance with the applicable Segregated Fund Custodial Agreement into which Cash, negotiable securities and/or short-term investments acceptable to the Province, acting reasonably, in respect of any Payments, Provincial Payments and the OEFC Payment to the Segregated Fund in question shall be deposited forthwith on receipt from time to time.
- 2.1.5 Segregated Fund Custodians.
- (a) OPG and the Province agree to obtain the co-operation of the Used Fuel Segregated Fund Custodian to the effect that it shall accept for deposit in the Used Fuel Segregated Fund all Payments from OPG (or from any OPG Nuclear Subsidiary), all Provincial Payments and any assets transferred to the Used Fuel Segregated Fund. The Parties agree to obtain the co-operation of the Decommissioning Segregated Fund Custodian to the effect that it shall accept for deposit in the Decommissioning Segregated Fund all Payments from OPG or from any OPG Nuclear Subsidiary, all Provincial Payments, any assets transferred to the Decommissioning Segregated Fund and the OEFC Payment.

- (b) OPG and the Province agree to take such steps as may be required to cause each Segregated Fund Custodian to deal with its Segregated Fund as provided in its respective Segregated Fund Custodial Agreement.

2.1.6 Selection of First Segregated Fund Custodians and Segregated Fund Managers. The Province and OPG shall as soon as practical after the execution and delivery of this Agreement jointly appoint the initial Segregated Fund Custodians and the initial Segregated Fund Managers on terms and conditions satisfactory to both the Province and OPG, acting reasonably. Each of the Province and OPG, in accordance with the terms of the applicable Segregated Fund Custodial Agreement or Segregated Fund Management Agreement, and subject to Applicable Law, shall have the right to remove any Segregated Fund Custodian and any Segregated Fund Manager, as the case may be, from time to time and, jointly with the other shall, acting reasonably, appoint a replacement Manager or replacement Custodian in its stead.

2.1.7 Indemnities under Agreements.

- (a) OPG agrees to reimburse the Province or the Ontario Financing Authority, as the case may be, in immediate funds for any amount paid or payable by the Province or the Ontario Financing Authority, as the case may be, pursuant to the indemnification provisions of (i) any Segregated Fund Custodial Agreement, (ii) any Segregated Fund Management Agreement, or (iii) any other written agreement approved by the Province (or its agent) and OPG with Persons dealing at arm's length with OPG and each of the OPG Nuclear Subsidiaries for services relating to the custody and management of the Segregated Funds the extent that the indemnification obligation arises out of (a) a direction from OPG or any other action or omission by OPG, or (b) a breach of the applicable agreement by OPG.

- (b) The Province agrees to reimburse, or to cause the Ontario Financing Authority to reimburse, OPG in immediate funds for any amount paid or payable by OPG pursuant to the indemnification provisions of (i) any Segregated Fund Custodial Agreement, (ii) any Segregated Fund Management Agreement, or (iii) any other written agreement approved by the Province (or its agent) and OPG with Persons dealing at arm's length with OPG and each of the OPG Nuclear Subsidiaries for services relating to the custody and management of the Segregated Funds to the extent that the indemnification obligation arises out of (a) a direction from the Province or the Ontario Financing Authority or any other action or omission by the Province or the Ontario Financing Authority, or (b) a breach of the applicable agreement by the Province or the Ontario Financing Authority.
- (c) The Province and OPG agree that for the purposes of this Agreement (and in particular, subsection 3.7.1 hereof) any No-Fault Indemnity Payments paid or payable to the Used Fuel Segregated Fund Custodian or to the Used Fuel Segregated Fund Manager constitute fees paid or payable to the Used Fuel Segregated Fund Custodian or to the Used Fuel Segregated Fund Manager, as the case may be, which have been reasonably allocated to the Used Fuel Segregated Fund and that any No-Fault Indemnity Payments paid or payable to the Used Fuel Segregated Fund Custodian or to the Used Fuel Segregated Fund Manager constitute fees paid or payable to the Used Fuel Segregated Fund Manager or to the Used Fuel Segregated Fund Manager, as the case may be, which have been reasonably allocated to the Used Fuel Segregated Fund.

2.2 Restriction on Use of the Segregated Funds

The assets of the Segregated Funds may not be held, used, paid, distributed, Disbursed, managed, encumbered in any way or transferred except as required or expressly permitted by the terms of this Agreement, the applicable Segregated Fund

Custodial Agreement and/or applicable Segregated Fund Management Agreement(s), and except in accordance with Applicable Law.

2.3 Nuclear Waste Management and Decommissioning

OPG and each OPG Nuclear Subsidiary agrees, and agrees to the extent that it is able to do so, to cause the WMO, if and when constituted, to comply with the requirements of Nuclear Legislation and the requirements of any Applicable Regulator under Nuclear Legislation and the terms of the then current Approved Reference Plans in Managing Nuclear Waste and in Decommissioning each of the Stations and Other Facilities.

2.4 Certain Provincial and OEFC Expenses

Each of OPG and the OPG Nuclear Subsidiaries agree to pay the following expenses of each of the Province and OEFC in Cash in a timely manner, without duplication, following written requests therefor from the Province or OEFC, as the case may be. Such written requests shall be accompanied by evidence of the expenditures in respect of which reimbursement is sought, in form and substance satisfactory to OPG, acting reasonably, including, where appropriate, copies of invoices for:

- (a) all reasonable out of pocket and third party supplier, legal, advisor, audit (including those incurred under subsection 9.3.3), agent, personal property security registrations and other costs incurred by the Province from and after the date of the execution and delivery of this Agreement in respect of its rights and obligations under this Agreement, any Segregated Fund Custodial Agreement and any Segregated Fund Management Agreement, excluding costs payable under any Segregated Fund Custodial Agreement, costs payable under any Segregated Fund Management Agreement and any financing costs related to the provision of any Provincial Payment (including any Provincial Commitment in Lieu) and/or any Financial Guarantee, and

- (b) all reasonable out of pocket and third party supplier, legal, advisor, audit, agent and other costs incurred by OEFC from and after the date of the execution and delivery of this Agreement in respect of its rights and obligations under this Agreement, excluding any financing costs related to the provision of the OEFC Payment (including any OEFC Commitment in Lieu).

No later than 60 days prior to each calendar year, the Province and OEFC shall provide OPG and the OPG Nuclear Subsidiaries with a good faith estimate of the amount each anticipates will be required to reimburse it for expenses under this section 2.4 in respect of that calendar year, provided, however, any such estimate so provided shall in no circumstances reduce or limit the obligation of OPG and the OPG Nuclear Subsidiaries to pay all such expenses incurred by the Province or OEFC, as aforesaid. Each of the Province and OEFC may, by notice in writing to OPG and the OPG Nuclear Subsidiaries at any time and from time to time during any calendar year, amend its estimate of such expenses. The foregoing obligations are in addition to and not in substitution for the indemnity obligations of OPG and the OPG Nuclear Subsidiaries under each of subsection 7.4.3 and section 13.4.

Article 3 -

Used Fuel Segregated Fund

3.1 "Used Fuel Eligible Costs" and "Used Fuel Excluded Costs"

For the purposes of this Agreement:

- 3.1.1 Definition of Used Fuel Eligible Costs. "Used Fuel Eligible Costs" means those reasonable costs described below reasonably relating to the Management of Used Fuel (excluding, for greater certainty, Used Fuel Excluded Costs) including disposal, deep geological disposal, storage (centralized storage or storage at the Site of a Station, as hereinafter

provided), and any other approach to the Management of Used Fuel proposed and approved as required pursuant to Nuclear Legislation, incurred (or to be incurred) by or on behalf of OPG or any OPG Nuclear Subsidiary or any other Person who assumes responsibility from OPG or from any one or more OPG Nuclear Subsidiary for all or part of such costs (including any such cost incurred, or to be incurred, by the WMO, CNSC or any other Applicable Regulator under Nuclear Legislation), where such costs are in accordance with an Approved Reference Plan or a Reference Plan that OPG reasonably expects will, in substance, be submitted to and approved by the Province and thereafter approved, if required, by the Applicable Regulator under Nuclear Legislation in due course, which costs shall be strictly limited to:

- (a) the following direct costs relating to the Management of Used Fuel, being:
 - (i) all costs reasonably relating to conducting studies on proposed approaches for the Management of Used Fuel and the development of a recommended approach in accordance with Nuclear Legislation;
 - (ii) all planning, research and development costs reasonably relating to all relevant aspects of the storage or the disposal of Used Fuel in a Repository, in each case either above or below ground;
 - (iii) all costs reasonably relating to selecting, acquiring, and maintaining one or more Sites for a Repository, including all reasonable legal, engineering and other costs incurred in selecting, acquiring and maintaining one or more Sites for a Repository, including all necessary planning and design costs and all technical, safety and environmental assessments;

- (iv) all costs reasonably relating to the development of conceptual, feasibility, preliminary and final designs for a Repository, its related Site and/or the Management of Used Fuel;
- (v) all costs reasonably relating to the making of applications for, pursuing, and maintaining all Licences for each such Repository and/or its related Site and for the transportation of Used Fuel to such Repository issued by the Applicable Regulator under Nuclear Legislation, and any reasonable legal, engineering and other costs incurred in meeting the requirements to obtaining such Licences, including all necessary planning and design costs and all technical, safety and environmental assessments;
- (vi) all costs reasonably relating to providing information to the public and taking such other public affairs steps as circumstances require with respect to the selection, acquisition, licensing, construction, operation, maintenance, Decommissioning and abandonment of any Repository and/or its related Site, and the transportation of Used Fuel to such Repository;
- (vii) all costs reasonably relating to the construction of a Repository;
- (viii) all costs reasonably relating to transporting Used Fuel to a Repository;
- (ix) all costs reasonably relating to operating and maintaining any Repository, including insurance and security costs and costs for handling, containment, radiation protection, processing, storage and disposal of Used Fuel;
- (x) all costs reasonably relating to obtaining approval for, purchasing, maintaining, loading, sealing, transporting,

processing and handling containers (including multi-purpose containers) for storage or disposal of Used Fuel in any Repository, which containers have been approved for such purpose, if required, by the Applicable Regulator under Nuclear Legislation;

- (xi) all costs reasonably relating to the final closure and sealing of each Repository, and all costs reasonably relating to the maintenance, insurance, security and monitoring of such closed and sealed Repositories in compliance with Nuclear Legislation; and
- (xii) all costs reasonably relating to the Decommissioning of each Repository including decontamination and restoration of the Site to the standard required by an Applicable Regulator under Nuclear Legislation;

provided that for greater certainty and subject to paragraph 3.1.1(b), for each of the foregoing subparagraphs 3.1.1(a)(iii) to (xii), none of the costs described therein which are (or are to be) incurred with respect to the storage of Used Fuel at or adjacent to a Station Site shall be a Used Fuel Eligible Cost;

- (b) for each Station, the following direct costs which reasonably relate to the storage of Used Fuel at or adjacent to the Station Site after Permanent Shutdown of such Station, from and after the earliest of the following dates:
 - (i) the date on which Safe-Storage for the Station is completed;
 - (ii) the date, in compliance with Good Utility Practices (or as otherwise determined by an Applicable Regulator under Nuclear Legislation), from and after which Used Fuel can no longer be

stored in one or more of the Station's wet bays without material modification thereof; and

- (iii) the date, in compliance with Good Utility Practices (or as otherwise determined by an Applicable Regulator under Nuclear Legislation), from and after which Used Fuel can no longer be stored in dry storage facilities located at or adjacent to the Station Site without material modification thereof;

being:

- (A) all costs reasonably relating to procuring additional dry storage casks, including transportation and handling costs;
- (B) all costs reasonably relating to the extension of the useful life, expansion or reinforcement of any wet bay located at the Station Site;
- (C) all costs reasonably relating to the extension of the useful life, expansion or reinforcement of any dry storage facilities located at or adjacent to the Station Site; and
- (D) all costs reasonably relating to making application for, pursuing, and maintaining all Licences associated with the matters referred to in this paragraph 3.1.1(b) and any reasonable legal, engineering, or other costs that reasonably relate to meeting the requirements to obtaining such Licences, including all necessary planning and design costs and all technical, safety and environmental assessments;

provided, however, once the dismantling or entombing of the Station has been completed, all costs incurred thereafter that reasonably relate to the handling, storage, containment, radiation protection,

environmental monitoring, security, and administration of Used Fuel at or adjacent to the Station Site shall be Used Fuel Eligible Costs;

- (c) if the Governor in Council selects an approach under the *Nuclear Fuel Waste Act* (Canada), if and when enacted, for the Management of Used Fuel other than deep geological disposal, centralized storage, or storage on or adjacent to the Site of one or more Stations, then, in any such event, all costs consistent with those Used Fuel Eligible Costs described in the foregoing provisions of this subsection 3.1.1 reasonably relating to the development and implementation of such approach selected by the Governor in Council shall be, and shall form part of, Used Fuel Eligible Costs;
- (d) any cost, or portion thereof, which would not otherwise qualify as a Used Fuel Eligible Cost, where the Province has determined in its sole discretion that:
 - (i) there are reasonable grounds for concluding that such cost is related to the Management of Used Fuel and is not a Used Fuel Excluded Cost; and
 - (ii) it is in the interests of both the Province and OPG that such cost, or portion thereof, be treated for the purposes of this Agreement as a Used Fuel Eligible Cost.

For greater certainty, the Parties agree that the foregoing right of the Province, being the exercise of an absolute discretion by the Province, cannot be the subject matter of a Dispute or Financial Issue under this Agreement or of any other proceeding at law initiated by OPG or any OPG Nuclear Subsidiary;

- (e) all costs and expenses deemed to be Used Fuel Eligible Costs under any of paragraphs 3.11.6(d) and (g), subsections 5.4.3, 7.3.2,

7.4.1, 9.3.2 and 11.1.3, section 13.4 and item 8 of Part II of Schedule 11.2, to the extent such costs are not in respect of the Decommissioning Segregated Fund;

- (e.1) all No-Fault Indemnity Payments payable by OPG, the Province or the Ontario Financing Authority from time to time provided the payment, where relating to a service shared among the Segregated Funds, is reasonably allocated to the Used Fuel Segregated Fund;
- (f) all reasonable fees, commissions and expenses of (i) the Used Fuel Segregated Fund Custodian under the Used Fuel Segregated Fund Custodial Agreement, (ii) each Used Fuel Segregated Fund Manager under its respective Used Fuel Segregated Fund Management Agreement and (iii) Persons dealing at arm's length with OPG and each of the OPG Nuclear Subsidiaries performing services related to the custody and management of the Used Fuel Segregated Fund provided that the retainer of those Persons has been agreed to in writing by the Province (or its agent) and OPG, acting reasonably; and
- (g) all Incremental Costs.

3.1.2 Definition of Used Fuel Excluded Costs. "Used Fuel Excluded Costs" means each of those costs described below incurred (or to be incurred) by or on behalf of OPG or any OPG Nuclear Subsidiary or any other Person who assumes responsibility from OPG or from any OPG Nuclear Subsidiary for all or part of such costs, (including any such cost incurred, or to be incurred by the WMO, CNSC or any other Applicable Regulator under Nuclear Legislation), whether or not relating to the Management of Used Fuel:

- (a) any costs arising as a result of a Nuclear Incident at a Station or Other Facility, including all clean-up costs and other costs arising as a result of the Nuclear Incident, such as disposal of property contaminated as a result of any such Nuclear Incident that would not have become

Radioactive but for the Nuclear Incident, and all damage claims relating to such Nuclear Incident, including those of third parties, and the liabilities of OPG or the OPG Nuclear Subsidiaries under the *Nuclear Liability Act* (Canada), but only in each case to the extent that any of the costs referred to in this paragraph 3.1.2(a) are in addition to costs which would have occurred had there been no Nuclear Incident;

- (b) any costs resulting from criminal or quasi-criminal offences or from civil proceedings or third party liability claims relating to the Management of Used Fuel, except reasonable costs relating to any civil proceedings or third party liability claims that would otherwise have qualified as Used Fuel Eligible Costs;
- (c) any costs relating to Low and Intermediate Level Waste co-located at the Site of a Repository which would not have been incurred but for the co-location of Low and Intermediate Level Waste at such Site; (it being acknowledged; for greater certainty, that any costs relating to Low and Intermediate Level Waste co-located at the Site of a Repository which would have been incurred even if such Low and Intermediate Level Waste were not so co-located are Used Fuel Eligible Costs);
- (d) any costs related to any Used Fuel that has not been produced at a Station; and
- (e) any Decommissioning Eligible Costs.

3.2 Nuclear Legislation Used Fuel Fund Requirements

- 3.2.1 Other Used Fuel Funds. To the extent that any Nuclear Legislation requires that OPG or one or more of the OPG Nuclear Subsidiaries establish one or more funds (for example, the NFWA Fund) to provide for the funding of costs relating to the Management of Used Fuel, then OPG and such OPG Nuclear Subsidiaries agrees with respect to each such fund:

- (a) If any cost mandated to be paid out of the fund in question is a Used Fuel Eligible Cost, then each such fund (including the NFWA Fund) shall be deemed to be part of the Used Fuel Segregated Fund, provided only that any costs payable out of any such fund (including the NFWA Fund) that do not qualify as Used Fuel Eligible Costs under paragraphs 3.1.1(a) to (f), inclusive, shall be deemed to be Incremental Costs;
- (b) To the extent that any Nuclear Legislation applies in respect of any Used Fuel Eligible Costs or to the Used Fuel Segregated Fund and any provision of the subject Nuclear Legislation directly conflicts with the provisions of this Agreement, the provision of the Nuclear Legislation shall prevail and govern to the extent of any such conflict.
- (c) To the extent that any Nuclear Legislation requires that a fund be established to provide for the funding of costs relating to the Management of Used Fuel that comes within the provisions of paragraph 3.2.1(a), and such Nuclear Legislation prohibits the commingling of the assets of such fund with the assets of another fund, including the Used Fuel Segregated Fund, then OPG and the OPG Nuclear Subsidiaries agree to establish a separate fund substantially similar in all respects to the Used Fuel Segregated Fund to the extent permitted by such Nuclear Legislation (or any Applicable Regulator thereunder) and such separate fund or funds shall be deemed for all purposes of this Agreement to form part of the Used Fuel Segregated Fund. In addition, OPG and the OPG Nuclear Subsidiaries agree to make Payments in respect of such costs in such amounts and as otherwise required by the said Nuclear Legislation, or by the Applicable Regulator thereunder, and to enter into a fund management agreement substantially similar to the Used Fuel Segregated Fund Management Agreement(s) in effect from time to time and a custodial agreement substantially similar to the Used Fuel Segregated Fund Custodial

Agreement in effect from time to time in respect of any such fund or funds. OPG and the Province agree to take such steps as may be required from time to time to ensure that such fund manager(s) and custodian are so engaged.

- (d) Notwithstanding paragraph 3.2.1(c), OPG and the Province agree to take whatever steps are reasonably necessary (including transferring assets from one fund to another) to ensure that to the extent permitted by Applicable Law, the Used Fuel Segregated Fund and any such separate fund or funds established under the previous provisions of this subsection 3.2.1 are treated for all purposes of this Agreement as a single fund, without any duplication by reason of the existence of more than one fund, in respect of each of the matters and procedures contemplated by this Agreement, including Payments to, Provincial Payments to, permitted Disbursements from, the right of the Province to receive reports, the right of the Province to audit and rights in respect of the excess or surplus from the Used Fuel Segregated Fund or any such separate fund or funds.

- 3.2.2 Limitation – the Province. To the extent that any Nuclear Legislation requires that there be only one fund relating to the Management of Nuclear Waste, such fund shall be the Used Fuel Segregated Fund, provided that the Province shall not (save as otherwise specifically provided in this Agreement) assume any financial risk in respect of, or be obligated to pay or fund the payment of, any Incremental Cost funded by, or Incremental Cost Disbursed from, the Used Fuel Segregated Fund or the return earned on any assets in the Used Fuel Segregated Fund allocated to Incremental Costs. For greater certainty, none of the obligations imposed on the Province under section 3.7 shall apply to the return earned on any assets in the Used Fuel Segregated Fund at any time allocated to Incremental Costs and none of the obligations imposed on the Province under section 3.8 shall apply to Incremental Costs. OPG and the OPG Nuclear Subsidiaries shall make Payments in accordance

with the terms and conditions of this Agreement to the Used Fuel Segregated Fund sufficient to fund all Incremental Costs.

- 3.2.3 Limitation - OEFC. OEFC shall in no circumstances be obligated to assume any financial risk whatsoever in respect of, or be obligated to pay or fund the payment of, any expense incurred by OPG or any OPG Nuclear Subsidiary in respect of the Management of Used Fuel.

3.3 Initial Determination of the Used Fuel Payment Schedule

- 3.3.1 1999 Reference Plan Estimated Used Fuel Eligible Costs. OPG has prepared to the satisfaction of the Province, and the Parties agree that Schedule 3.3.1 sets out the calendar-year-by-calendar-year estimated Used Fuel Eligible Costs (expressed both in constant 1999 Dollars and Present Value as at January 1, 1999 dollars) based on the 1999 Reference Plan, and such further and other relevant information as required by either OPG or the Province, acting reasonably.
- 3.3.2 Original Payment Schedule 3.3. Based on the information referred to in Schedule 3.3.1, and the assumption that the Used Fuel Segregated Fund is not subject to tax of any nature whatsoever, OPG has prepared, and the other Parties agree, that the annexed Original Payment Schedule 3.3 accurately reflects the individual nominal quarterly Payments to be made by OPG and the OPG Nuclear Subsidiaries to the Used Fuel Segregated Fund and the portion of the payments set out in Original Payment Schedule 3.3 allocated to each Station.

3.4 OPG Initial Payment and Bruce Extraordinary Payments

- 3.4.1 OPG Initial Payment. Concurrently with this Agreement becoming effective, OPG agrees to make an initial Payment in Cash and/or negotiable securities and short-term investments acceptable to the Province, acting reasonably, to the Used Fuel Segregated Fund equal to the greater of (a) such Payment that is then required under the provisions of the *Nuclear Fuel Waste Act* (Canada),

if and when enacted, except to the extent that such Payment has already been made, and (b) the amount as of the date this Agreement becomes effective by which (i) the sum of \$597,769,347 plus interest thereon calculated at the Discount Rate for the period from January 1, 2002 to that date plus the aggregate Present Value at that date of each nominal quarterly Payment payable to the Used Fuel Segregated Fund under the Original Payment Schedule 3.3 prior to that date, exceeds (ii) the aggregate Present Value of each Used Fuel Eligible Cost incurred between January 1, 2002 and that date. For greater certainty, any amount paid into the NFWA Fund by OPG prior to the date on which the initial Payment is made under this Agreement shall form part of the initial Payment to the Used Fuel Segregated Fund contemplated by this paragraph 3.4.1(b).

3.4.2 Bruce Extraordinary Payments

- (a) OPG and the OPG Nuclear Subsidiaries hereby agree to make one or more Payments to the Used Fuel Segregated Fund on or before March 24, 2008 in an amount equal in the aggregate to \$246,745,518 plus interest at a rate equal to the Discount Rate plus 1.25% on the unpaid balance thereof from and after February 14, 2003 until paid in full (collectively, the "**Bruce Extraordinary Payment**").
- (b) The Payment obligation imposed under paragraph 3.4.2(a) is subject to the qualification that to the extent that the amount of any such Payment exceeds the Present Value, at the time of such Payment, of the balance of all Payments due by OPG and the OPG Nuclear Subsidiaries under Original Payment Schedule 3.3 or the then current Amended Payment Schedule 3.6 if Original Payment Schedule 3.3 has been replaced pursuant to section 3.6, then OPG and/or the subject OPG Nuclear Subsidiary(ies) in question shall be entitled to retain such excess to its/their own account.

3.5 OPG Quarterly Payments

From and after the date of the initial Payment to the Used Fuel Segregated Fund provided for in subsection 3.4.1, OPG and the OPG Nuclear Subsidiaries agree to make nominal quarterly Payments to the Used Fuel Segregated Fund on the last Business Day of every quarter during the term of this Agreement on the basis of Original Payment Schedule 3.3 or the Amended Payment Schedule 3.6 in effect from time to time, if Original Payment Schedule 3.3 has been replaced. To the extent that OPG or any OPG Nuclear Subsidiary fails to make any such nominal quarterly Payment when due, it agrees to pay to the Used Fuel Segregated Fund, in addition to the unpaid amount, an amount equal to the interest which would have been earned on the amount not so paid if that amount had earned interest from the date it was due to the date such Payment is made at a rate of interest equal to the greater of (a) the Used Fuel Segregated Fund Rate of Return during such period, and (b) the Prime Rate of Interest in effect during such period plus two (2%) per cent.

3.6 Review of Used Fuel Segregated Fund Payment Obligations

In addition to any other circumstances specifically provided in this Agreement, Original Payment Schedule 3.3, any subsequent Amended Payment Schedule 3.6, and the quarterly Payment obligations thereunder, shall be amended from time to time during the term of this Agreement and replaced with an Amended Payment Schedule 3.6 in accordance with the following:

- 3.6.1 Requirement to Amend. The amount of the quarterly Payments to the Used Fuel Segregated Fund (as reflected in Original Payment Schedule 3.3 or the then current Amended Payment Schedule 3.6 if Original Payment Schedule 3.3 has been replaced) shall be revised in accordance with the following provisions of this section 3.6 and the procedures in Schedule 3.6.1 each time that (a) a new or amended Reference Plan becomes an Approved Reference Plan, (b) a Decommissioning Segregated Fund Matching Payment is made by the Province to the Used Fuel Segregated Fund, (c) a transfer of assets from the Decommissioning Segregated Fund is made to the Used Fuel Segregated

Fund under subsection 4.7.3, (d) a Bruce Extraordinary Payment is paid in full to the Used Fuel Segregated Fund, (e) either OPG or the Province, acting reasonably, makes a determination that the Used Fuel Segregated Fund is subject to tax of any nature whatsoever or, having become subject to such tax, is no longer subject to such tax, whether in whole or in part, (f) the Province approves or is deemed to have approved a CNSC Reconciliation Statement under subsection 7.3.4, or (g) any other payment or contribution is made to the Used Fuel Segregated Fund other than a Payment pursuant to section 3.5 subsections 7.3.5, 9.2.5 or 9.3.4 or a Provincial Payment (each of the events in paragraphs (a) through (g) of this subsection 3.6.1 being a "Triggering Event".

3.6.2 Determination of Payments. The nominal quarterly Payments to the Used Fuel Segregated Fund shall be calculated as of the date of a Triggering Event as follows:

- (a) Determine Station Amount. The Station Amount to be paid for each Station for each quarter during that Station's Remaining Operating Period shall be determined. Subject to the other paragraphs of this subsection 3.6.2, the "Station Amount" for a Station as of the date of a Triggering Event shall be the equal nominal amount for each quarter during the Station's then Remaining Operating Period determined so that the aggregate Present Value of each of those equal quarterly nominal amounts plus the Fair Market Value of the assets of the Used Fuel Segregated Fund notionally allocated to that Station equals the Used Fuel Balance to Complete Cost Estimate notionally allocated to that Station in each case as of the date of the Triggering Event. For greater certainty, a Station Amount can be either a positive or negative amount.
- (b) Station Amount Where Limitation Applies. Notwithstanding paragraph 3.6.2(a), if the limitation in paragraph 3.6.2(e) applies, then for the purposes only of determining the amount by which the nominal

quarterly Payments shall be less than the nominal quarterly Payments set out in the Original Payment Schedule 3.3, the Station Amount for each Station shall be recalculated: (i) insofar as it relates to the Fair Market Value of assets of the Used Fuel Segregated Fund notionally allocated to Incremental Costs and the portion of the Balance to Complete Cost Estimate notionally allocated to Incremental Costs (in each case in accordance with subsection 9.2.3), in the manner otherwise described in this subsection 3.6.2; and (ii) insofar as it relates to the remaining Fair Market Value of assets of the Used Fuel Segregated Fund and the remaining portion of the Used Fuel Balance to Complete Cost Estimate, as the equal nominal amount for each quarter during the Remaining Operating Period for the Station under the 1999 Reference Plan, determined so that the Present Value of each of those quarterly nominal amounts plus the Fair Market Value of the remaining assets notionally allocated to that Station equals the remaining portion of the Used Fuel Balance to Complete Cost Estimate notionally allocated to that Station. If the application of this paragraph 3.6.2(b) would result in an obligation to make any Payments on any date prior to January 1, 2020 which exceed the nominal quarterly Payments set out in Original Payment Schedule 3.3, then notwithstanding this subsection 3.6.2, the nominal quarterly Payments payable on any such date shall be as set out in Original Payment Schedule 3.3. This paragraph 3.6.2(b) shall not apply in respect of Payments calculated for any period on or after January 1, 2020.

- (c) Aggregate Quarterly Payments and Right to Net. The nominal quarterly Payment to the Used Fuel Segregated Fund shall equal the aggregate of the Station Amounts for each Station. For greater certainty, if the Station Amount for any Station is a negative amount because the Fair Market Value of the assets of the Used Fuel Segregated Fund notionally allocated to that Station exceeds the portion of the Used Fuel Balance to Complete Cost Estimate notionally

allocated to that Station, the Station Amount for that Station shall be calculated as a negative amount which may be deducted or netted against other amounts in determining the aggregate quarterly Payment to the Used Fuel Segregated Fund. The resultant nominal quarterly Payments shall be set out in a new or revised Amended Payment Schedule 3.6 which, subject to paragraph 3.6.2(e), shall replace the then current Original Payment Schedule 3.3 or Amended Payment Schedule 3.6 as the case may be. Notwithstanding the above, the aggregate nominal quarterly Payment cannot be less than nil.

(d) Tax Over-Contribution. Notwithstanding paragraph 3.6.2(e), to the extent that:

- (i) OPG or any OPG Nuclear Subsidiary has at any time made any over-contribution to the Used Fuel Segregated Fund by virtue of Payments being previously determined on the basis that the Used Fuel Segregated Fund is subject to tax of any nature or of any amount; or
- (ii) a Tax Payment is transferred or paid to the Used Fuel Segregated Fund in accordance with paragraph 4.7.3(c),

then the amount of such over-contribution or Tax Payment plus interest on the balance thereof (after giving effect to the following provisions of this paragraph 3.6.2(d)) at a rate equal to the Used Fuel Segregated Fund Rate of Return (for the period of time commencing on the date of each over-contribution or the date on which the Tax Payment is paid or transferred into the Used Fuel Segregated Fund, as applicable, and ending on the date that such over-contribution or Tax Payment to which such interest relates has been applied to reduce the nominal quarterly Payments) shall be applied to reduce the nominal quarterly Payments to the Used Fuel Segregated Fund next falling due

until such time as the amount of such over-contribution or Tax Payment, as applicable, and interest, have been exhausted.

(e) Limitation. Notwithstanding paragraphs 3.6.2(a) and 3.6.2(c), but subject to paragraph 3.6.2(d), the nominal quarterly Payments to the Used Fuel Segregated Fund may not be less than (but may be equal to) the nominal quarterly amounts set out in Original Payment Schedule 3.3, except in accordance with the following:

- (i) if (and for so long as) the Present Value Threshold Percentage is less than 60%, then the quarterly Payments to the Used Fuel Segregated Fund shall never be less than the nominal quarterly Payments set out in Original Payment Schedule 3.3;
- (ii) if (and for so long as) the Present Value Threshold Percentage is equal to or greater than 60%, but less than 70% and the nominal quarterly Payments calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c) would be less than the nominal quarterly Payments set out in Original Payment Schedule 3.3, then the nominal quarterly Payments to the Used Fuel Segregated Fund shall be those nominal quarterly Payments set out in Original Payment Schedule 3.3 less 25% of the amount, if any, by which the nominal quarterly Payments set out in Original Payment Schedule 3.3 exceeds the nominal quarterly Payments calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c);
- (iii) if (and for so long as) the Present Value Threshold Percentage is equal to or greater than 70%, but less than 80% and the nominal quarterly Payments calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c) would be less than the nominal quarterly Payments set out in Original Payment Schedule 3.3, then the nominal quarterly Payments to the Used Fuel

Segregated Fund shall be those nominal quarterly Payments set out in Original Payment Schedule 3.3 less 50% of the amount, if any, by which the nominal quarterly Payments set out in Original Payment Schedule 3.3 exceeds the nominal quarterly Payments calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c);

- (iv) if (and for so long as) the Present Value Threshold Percentage is equal to or greater than 80%, but less than 90% and the nominal quarterly Payments calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c) would be less than the nominal quarterly Payments set out in Original Payment Schedule 3.3, then the nominal quarterly Payments to the Used Fuel Segregated Fund shall be those nominal quarterly Payments set out in Original Payment Schedule 3.3 less 75% of the amount, if any, by which those nominal quarterly Payments set out in Original Payment Schedule 3.3 exceeds the nominal quarterly Payments calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c); and
- (v) if (and for so long as) the Present Value Threshold Percentage is equal to or greater than 90%, then the nominal quarterly Payments shall be those calculated pursuant to paragraphs 3.6.2(a) and 3.6.2(c).
- (f) Assets to be Taken into Account. For purpose of determining a Station Amount, the assets of the Used Fuel Segregated Fund as of the date of a Triggering Event shall first be adjusted to give effect to:
 - (i) any Provincial Payment required to be made under paragraphs 3.8.3(a), (b) or (c) or 3.10.3(b) as of the date of that Triggering Event whether or not such payment has been made; (ii) any reimbursement to the Province of any payment required pursuant to subsection 7.4.1 in respect of an activity required or permitted to be funded from the

Used Fuel Segregated Fund and of any over-contribution required pursuant to paragraph 3.8.3(g) as at that Triggering Event, in each case whether or not such reimbursement has actually been made; (iii) any Payments deemed to be made to the Used Fuel Segregated Fund pursuant to paragraphs 3.7.1(d) or 3.8.3(g) or subsection 7.4.1 as of that Triggering Event notwithstanding that OPG may have paid the amount to the Province; and (iv) any payment to or from the Used Fuel Segregated Fund which will be required pursuant to paragraph 3.7.1(b) as of that Triggering Event even if such payment has not been made.

- (g) Allocation of Value of Assets. For purposes of the determination of Payments pursuant to this Agreement only, the Fair Market Value of the assets of the Used Fuel Segregated Fund shall be notionally allocated among the Stations at any time in accordance with the following:
 - (i) The initial Payment made by OPG pursuant to subsection 3.4.1 shall be notionally allocated among the Stations as set out in Original Payment Schedule 3.3.
 - (ii) Each Payment pursuant to Original Payment Schedule 3.3 or an Amended Payment Schedule 3.6 shall be notionally allocated to each Station *pro rata* to the Station Amounts for each Station included in such Payment. For this purpose and for greater certainty, any payments made by OPG and the OPG Nuclear Subsidiaries to the Province pursuant to paragraphs 3.7.1(d), 3.8.3(g) or subsection 7.4.1 shall be notionally allocated to each Station as if the payments had been made to the Used Fuel Segregated Fund.
 - (iii) Provincial Payments, Decommissioning Segregated Fund Matching Payments, assets transferred from the

Decommissioning Segregated Fund, Bruce Extraordinary Payments and any other payment or contribution made to the Used Fuel Segregated Fund other than a Payment pursuant to Original Payment Schedule 3.3 or an Amended Payment Schedule 3.6 shall be notionally allocated among the Stations *pro rata* to the amount, if any, by which the Used Fuel Balance to Complete Cost Estimate notionally allocated to each Station exceeds the Fair Market Value of the assets of the Used Fuel Segregated Fund notionally allocated to such Station, in each case as of the time of the payment or contribution and in accordance with the then current Approved Reference Plan.

- (iv) It shall be assumed that all assets of the Used Fuel Segregated Fund earn a rate of return equal to the Discount Rate regardless of the actual rate of return earned on those assets and that such earning will be allocated to each Station in the same manner as the related assets are allocated pursuant to this section 3.6.
- (h) Allocation of Used Fuel Balance to Complete Cost Estimate and Used Fuel Cost Estimate. For purposes of the determination of Payments pursuant to this Agreement only, the Used Fuel Balance to Complete Cost Estimate and the Used Fuel Cost Estimate shall be notionally allocated among the Stations at any time in accordance with the then current Approved Reference Plan.
- (i) Allocation of Disbursements. For purposes of the determination of Payments pursuant to the Agreement only, Disbursements from the Used Fuel Segregated Fund in any calendar year shall, notwithstanding how the Disbursement may have actually been expended, be notionally allocated among the Stations *pro rata* to that calendar year's portion of the Used Fuel Cost Estimate notionally

allocated to each Station for such calendar year, in accordance with the then current Approved Reference Plan.

3.6.3 Remaining Operating Period.

- (a) If a new or amended Reference Plan becomes an Approved Reference Plan more than five (5) years prior to the Operating Period End Date for a Station as contained in the previous Approved Reference Plan and such Station has Permanently Shutdown or the Operating Period End Date in the new Approved Reference Plan is earlier than the Operating Period End Date contained in the previous Approved Reference Plan, then the Remaining Operating Period for that Station shall be the greater of (i) five (5) years from the date of the new Approved Reference Plan and (ii) Remaining Operating Period for such Station in the new Approved Reference Plan.
- (b) If a new or amended Reference Plan becomes an Approved Reference Plan fewer than five (5) years prior to the Operating Period End Date for a Station as contained in the previous Approved Reference Plan, then the Remaining Operating Period for such Station shall be the Remaining Operating Period for such Station under the immediately preceding Approved Reference Plan.
- (c) If a Triggering Event occurs after a Station has Permanently Shutdown and the Fair Market Value of the assets notionally allocated to that Station is not equal to the portion of the Used Fuel Balance to Complete Cost Estimate then notionally allocated to that Station, the Remaining Operating Period for that Station shall be deemed to be five (5) years from the date of the Triggering Event.
- (d) If (i) the amount, if any, as at the date of a Triggering Event, by which the Used Fuel Balance to Complete Cost Estimate notionally allocated

to Incremental Costs exceeds the Fair Market Value of the assets notionally allocated to Incremental Costs (in each case in accordance with subsection 9.2.3) under the then current Approved Reference Plan, is greater than such excess amount as at the date of a Triggering Event under the immediately preceding Approved Reference Plan or (ii) the Adjusted Cost Estimate under the then current Approved Reference Plan is greater than the Adjusted Cost Estimate under the immediately preceding Approved Reference Plan, then, in either such case, the Remaining Operating Period for each Station shall be the greater of (A) the Remaining Operating Period for that Station under the then current Approved Reference Plan and (B) five (5) years from the date of the Triggering Event.

3.7 Adjustment for Used Fuel Segregated Fund Rate of Return

3.7.1 Provincial Adjustment for Non-Incremental Used Fuel Segregated Fund Rate of Return.

- (a) Concurrent with the preparation of an Amended Payment Schedule 3.6, OPG shall prepare and submit a written report to the Province setting out OPG's estimate of the amount of the Actual Used Fuel Fund Value and the Fixed Used Fuel Fund Value, as of the day immediately before the most recent Triggering Event (the "Valuation Date"). The "Actual Used Fuel Fund Value" for any Valuation Date means the Fair Market Value of the assets in the Used Fuel Segregated Fund as of that date. The "Fixed Used Fuel Fund Value" for any Valuation Date means the aggregate of (i) the value the Used Fuel Segregated Fund would have had had the assets in the Used Fuel Segregated Fund earned a rate of return equal to the Discount Rate during the period commencing on the date on which the conditions precedent set out in subsection 8.1.2 are satisfied or waived and ending on the Valuation Date, plus (ii) the aggregate Present Value of (A) all brokerage fees paid in respect of the Used Fuel

Segregated Fund, (B) fees paid or then payable to the Used Fuel Segregated Fund Managers or Used Fuel Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds, and (C) fees paid or then payable to any other Person which are Used Fuel Eligible Costs pursuant to paragraph 3.1.1(f). For greater certainty, services relating to custodianship of a Segregated Fund include fees for transaction processing, income processing, administration, performance measurement and accounting services for the Segregated Fund but exclude any Disbursement costs (other than the costs of paying the Disbursements as such) charged by any Person other than the Segregated Fund Custodian or its agent or agents. For purposes of determining the Actual Used Fuel Fund Value and the Fixed Used Fuel Fund Value, all assets transferred to the Used Fuel Segregated Fund from the Decommissioning Segregated Fund and any Decommissioning Segregated Fund Matching Payment made by the Province at that time shall for greater certainty be included as assets of the Used Fuel Segregated Fund, but all amounts allocated to Incremental Costs in accordance with subsection 9.2.3 and all assets transferred to the Decommissioning Segregated Fund from the Used Fuel Segregated Fund shall be excluded from the assets of the Used Fuel Segregated Fund. Notwithstanding the foregoing, all Provincial Payments previously made by the Province under subparagraph 3.7.1(b)(ii) shall be included in the assets of the Used Fuel Segregated Fund for the purposes of determining the Actual Used Fuel Fund Value and excluded from the assets of the Used Fuel Segregated Fund for the purposes of determining the Fixed Used Fuel Fund Value. In addition, the determination of the Fixed Used Fuel Fund Value shall take into account each of the timing and amount of the Disbursements out of the Used Fuel Segregated Fund, other than Disbursements to pay Incremental Costs.

- (b) After receipt by the Province of the report referred to in paragraph 3.7.1(a) and all supporting documentation in respect thereof reasonably requested by it from OPG, and after the Actual Used Fuel Fund Value and the Fixed Used Fuel Fund Value in question have either been agreed to by OPG and the Province or any Dispute or Financial Issue in respect thereof has been determined under the provisions of Article 11 or Schedule 11.2:

- (i) the Province may direct the Used Fuel Segregated Fund Custodian to make a Disbursement to the Province in any amount up to the amount, if any, by which the Actual Used Fuel Fund Value exceeds the Fixed Used Fuel Fund Value; and
- (ii) the Province shall deliver a notice in writing in respect thereof to the Used Fuel Segregated Fund Custodian and immediately make a Provincial Payment to the Used Fuel Segregated Fund equal to the amount, if any, by which the Fixed Used Fuel Fund Value exceeds the Actual Used Fuel Fund Value,

together with interest thereon at the Discount Rate during the period from the applicable Valuation Date to the date of payment. The Province may set off against any Provincial Payment required pursuant to subparagraph 3.7.1(b)(ii), the amount of any Disbursement required to be made to the Province pursuant to any of paragraph 3.7.1(d), paragraph 3.8.3(g) or subsection 7.4.1, in each case to the extent not yet made, without duplication and net of any payments by OPG and the OPG Nuclear Subsidiaries to the Province under any of paragraph 3.7.1(d), paragraph 3.8.3(g) or subsection 7.4.1 which have been applied to reduce the amount of any such required Disbursement.

- (c) Subject to any Applicable Law to the contrary, payments required by the Used Fuel Segregated Fund or the Province pursuant to this

subsection 3.7.1 may be satisfied by increasing or reducing, as applicable, the undrawn balance on a Provincial Commitment in Lieu.

- (d) To the extent that the Disbursements referred to in subparagraph 3.7.1 (b)(i) are prohibited by Applicable Law or the Used Fuel Segregated Fund Custodian otherwise fails for any reason to make such Disbursements to the Province, OPG and the OPG Nuclear Subsidiaries agree to pay the amount of such Disbursement (including for greater certainty applicable interest under paragraph 3.7.1(b) but only up to the amount of Payments next falling due until the amount of such Disbursement is paid to the Province. The Province shall bear the risk that OPG and the OPG Nuclear Subsidiaries are not obligated to make Payments equal to the amount of the Disbursement. The Parties shall require the Used Fuel Segregated Fund Custodian to credit the amount of such payments by OPG to the Province as if such payments had been made as Payments to the Used Fuel Segregated Fund and OPG and the OPG Nuclear Subsidiaries shall be deemed to have discharged their obligations to make such Payments to the extent so paid. However, to the extent Applicable Law does not permit such amounts to be credited against Payments to the Used Fuel Segregated Fund or to the extent compliance with this paragraph 3.7.1(d) does not fully discharge any obligation of OPG and the OPG Nuclear Subsidiaries to make such payments under Applicable Law, OPG and the OPG Nuclear Subsidiaries shall not be obligated to pay such amounts to the Province.
- (e) If the Province has, before the 30th day after delivery of the said report and all supporting documentation in respect thereof reasonably requested (and received) by it from OPG, filed a Dispute under Schedule 11.2 or disputes a Financial Issue under subsection 11.1.3 with respect to the report and supporting documentation in respect thereof reasonably requested by the Province under this

subsection 3.7.1, any Provincial Payment to the Used Fuel Segregated Fund required under this subsection 3.7.1 shall not be made until a final determination of any such Dispute or Financial Issue has been made. If no such Dispute or Financial Issue has arisen within that period, the Province shall be deemed to have accepted the report.

3.8 Allocation of Liability

The Province agrees to make Provincial Payments, and OPG and the OPG Nuclear Subsidiaries agree to make Payments to the Used Fuel Segregated Fund in accordance with the following provisions of this section 3.8.

3.8.1 Used Fuel Bundle Threshold Limitation on Provincial Payments. The liability of the Province for Provincial Payments under this section 3.8 is based on the assumption that the total number of Used Fuel Bundles discharged and projected to be discharged from all Stations will be 2,230,000 (the Used Fuel Bundle Threshold). OPG and the OPG Nuclear Subsidiaries shall make Payments in accordance with the terms and conditions of this Agreement sufficient to fund the payment of all Incremental Costs.

3.8.2 Calculation of Approved Cost Estimate and Adjusted Cost Estimate. At each time that a new or amended Reference Plan becomes an Approved Reference Plan, OPG shall calculate each of the Approved Cost Estimate and the Adjusted Cost Estimate subject in each case to the approval thereof in writing by the Province, acting reasonably.

3.8.3 Payments and Provincial Payments. The Adjusted Cost Estimate shall be compared to the liability thresholds set out below and the Parties shall comply with the following provisions:

- (a) If the Adjusted Cost Estimate exceeds \$4.6 billion but is less than or equal to \$6.6 billion (each Present Value as of January 1, 1999), the Province shall make Provincial Payments to the Used Fuel Segregated Fund equal to 50% of the amount by which the lesser of:

- (i) \$6.6 billion; and
- (ii) the amount of the Adjusted Cost Estimate;

exceeds \$4.6 billion (all amounts, including for greater certainty, the amount of such Provincial Payments, Present Value as of January 1, 1999).

- (b) If the Adjusted Cost Estimate exceeds \$6.6 billion but is less than or equal to \$10.0 billion (each, Present Value as of January 1, 1999), the Province agrees to make Provincial Payments to the Used Fuel Segregated Fund equal to:

- (i) the Provincial Payments which would have been required under paragraph 3.8.3(a), being \$1.0 billion, and
- (ii) 90% of the amount by which the lesser of:
 - (A) \$10.0 billion; and
 - (B) the amount of the Adjusted Cost Estimate;

exceeds \$6.6 billion (all amounts, including for greater certainty, the amount of such Provincial Payments, Present Value as of January 1, 1999).

- (c) If the Adjusted Cost Estimate exceeds \$10.0 billion (Present Value as of January 1, 1999), the Province agrees to make Provincial Payments to the Used Fuel Segregated Fund equal to the sum of (i) the Provincial Payments which would have been required under paragraph 3.8.3(b), being \$4.06 billion and (ii) 100% of the difference between the amount of the Adjusted Cost Estimate and \$10.0 billion (all amounts,

including for greater certainty, the amount of such Provincial Payments, Present Value as of January 1, 1999).

- (d) OPG and the OPG Nuclear Subsidiaries agree to make Payments to the Used Fuel Segregated Fund in accordance with the terms and conditions of this Agreement sufficient to fund the payment of all Used Fuel Eligible Costs in the Adjusted Cost Estimate at the times and in the amounts set out in Original Payment Schedule 3.3 or the then current Amended Payment Schedule 3.6 if Original Payment Schedule 3.3 has been replaced, in all cases after taking into account the Provincial Payments required by this subsection 3.8.3.
- (e) The determination from time to time of Amended Payment Schedule 3.6 shall reflect the foregoing provisions of this subsection 3.8.3, without duplication of a Payment already required to be made under Original Payment Schedule 3.3 or an Amended Payment Schedule 3.6.
- (f) The Parties acknowledge that to the extent that the Used Fuel Segregated Fund is used to permit OPG and/or the OPG Nuclear Subsidiaries to honour their obligations under any Nuclear Legislation as contemplated by section 3.2, all Incremental Costs resulting from the application of section 3.2 shall be excluded from the operation of the foregoing provisions of this subsection 3.8.3. OPG and the OPG Nuclear Subsidiaries agree to make Payments sufficient to fund in whole all such Incremental Costs at the times and in the amounts provided for in this Agreement, and they acknowledge that neither the Province nor OEFC shall in any circumstances be obligated to fund any portion of such Incremental Costs or to assume any risk of increases in such costs as a result of any change in the provisions (or the enactment of) any Nuclear Legislation or otherwise, save only any

payment obligation of the Province as may arise under any Provincial Guarantee.

- (g) The Parties acknowledge that circumstances may arise where the Province will have made Provincial Payments to the Used Fuel Segregated Fund in excess of its obligation to do so under the terms of this Agreement. The Province shall have the right as at December 31 in any year during the term of this Agreement to cause OPG to prepare a calculation of any such over-contribution to the Used Fuel Segregated Fund by the Province and to submit such estimate to the Province for its approval. The Province shall review the report and all supporting documentation in respect thereof reasonably requested (and received) by it from OPG and, acting reasonably, approve OPG's calculation, failing which the resulting Financial Issue shall be settled in accordance with subsection 11.1.3. If at any time it is determined that the Province has over-contributed to the Used Fuel Segregated Fund, to the extent that Applicable Law permits such over-contribution (together with interest thereon at the Discount Rate for the period from the date of the over-contribution to the date of repayment to the Province) to be re-paid to the Province out of the Used Fuel Segregated Fund, OPG and the Province agree to cause the Used Fuel Segregated Fund Custodian to make a Disbursement to the Province equal to the amount of the over-contribution (plus interest as aforesaid) within 10 Business Days of the Province making a request therefor in writing, provided that the repayment to the Province may be made in Cash only to the extent of the then Present Value of Cash contributed to the Used Fuel Segregated Fund up to that time by the Province, net of the then Present Value of any repayment to the Province in Cash previously made pursuant to this subsection 3.8.3. Any repayment to the Province not permitted to be made in Cash because of the previous sentence shall be made by reducing the amount of any outstanding Provincial Commitment in Lieu previously

contributed to the Used Fuel Segregated Fund. To the extent that such reimbursement is prohibited by Applicable Law or the Used Fuel Segregated Fund Custodian otherwise fails for any reason to reimburse the Province, OPG and the OPG Nuclear Subsidiaries agree to pay the amount of such over-contribution (plus interest as aforesaid) to the Province in Cash, but only up to the amount of Payments next falling due until the amount of such over-contribution (plus interest as aforesaid) is paid to the Province. The Province shall bear the risk that OPG and the OPG Nuclear Subsidiaries are not obligated to make Payments equal to the amount of the over-contribution (plus interest as aforesaid). The Parties shall require the Used Fuel Segregated Fund Custodian to credit the amount of such payments by OPG to the Province as if such payments had been made as Payments to the Used Fuel Segregated Fund and OPG and the OPG Nuclear Subsidiaries shall be deemed to have discharged their obligations to make such Payments to the extent so paid. However, to the extent Applicable Law does not permit such amounts to be credited against Payments to the Used Fuel Segregated Fund or to the extent compliance with this paragraph 3.8.3(g) does not fully discharge any obligation of OPG and the OPG Nuclear Subsidiaries to make such payments under Applicable Law, OPG and the OPG Nuclear Subsidiaries shall not be obligated to pay such amounts to the Province.

- (h) The Province may set off against any Provincial Payment required pursuant to subsection 3.8.3 the amount of any Disbursement required to be made to the Province pursuant to any of paragraph 3.7.1(d), paragraph 3.8.3(g) or subsection 7.4.1, in each case to the extent not yet made, without duplication and net of any payments by OPG and the OPG Nuclear Subsidiaries to the Province under any of paragraph 3.7.1(d), paragraph 3.8.3(g) or subsection 7.4.1 which have been applied to reduce the amount of any such required Disbursement.

3.9 Provincial Payments - General

3.9.1 Limitation. Except as specifically set out in this Agreement (including as set out in subsections 3.7.1, 3.8.3 and 4.7.3 and paragraph 3.10.3(b)), the Province shall not be obligated to make any payments of any kind to the Used Fuel Segregated Fund. OEFC shall, in no circumstances, be obligated to make any payments of any kind to the Used Fuel Segregated Fund.

3.9.2 Satisfaction of Provincial Payments. Any Provincial Payment to the Used Fuel Segregated Fund shall be made in any of the following ways:

- (a) by payment in Cash;
- (b) by the execution and delivery by the Province of one or more Commitments in Lieu substantially in the form annexed as Schedule 6.1;
- (c) in accordance with the provisions of paragraph 6.1.2(b), by the increase in the undrawn balance under an outstanding Provincial Commitment in Lieu by endorsement on the grid forming part thereof; or
- (d) by any combination of the foregoing alternatives. To the extent that the Province executes and delivers a Commitment in Lieu under this subsection 3.9.2, the Province agrees to comply with the provisions of section 6.1 in respect thereof.

3.9.3 Conditions Precedent to Each Provincial Payment. Unless otherwise required by Applicable Law and subject to the provisions of subsection 5.2.3 and paragraph 6.1.2(a), the Province shall only be obligated to make payments to the Used Fuel Segregated Fund in Cash as required by this Agreement or pursuant to a Provincial Commitment in Lieu upon delivery by OPG of a duly executed Compliance Certificate addressed to the Province and to the Used

Fuel Segregated Fund Custodian (even if such Compliance Certificate discloses breaches by OPG or any OPG Nuclear Subsidiary of any of the terms and conditions of this Agreement) dated the date on which the Province makes a payment in Cash to the Used Fuel Segregated Fund; provided only that the Province shall not be obligated to make any Provincial Payment if as a result of one or more breaches of the Agreement the Province has at the time the Provincial Payment is otherwise due appointed a Receiver under either paragraphs 3.11.6(a) or 4.8.6(a).

3.10 Disbursements Out of the Used Fuel Segregated Fund

3.10.1 Disbursements Out of the Used Fuel Segregated Fund.

- (a) Save as hereinafter specifically provided, Disbursements from the Used Fuel Segregated Fund shall only be made pursuant to Approved Budgets and, where applicable, in compliance with the requirements of Nuclear Legislation.
- (b) Those Used Fuel Eligible Costs or other payments described in any of paragraphs 3.1.1(e.1), 3.11.6(d) and (g), subsections 5.4.3, 7.4.1 and 13.4, those taxes described in paragraph (b) of section 1.69 of Schedule 1.1 and any other Disbursements specifically authorized to be made from the Used Fuel Segregated Fund by the terms of this Agreement shall be Disbursed against a requisition therefor signed by the Province or its agent alone.
- (c) All Used Fuel Eligible Costs and all other Disbursements (other than fees and expenses of any Used Fuel Segregated Fund Custodian or any Used Fuel Segregated Fund Manager, payment of which is provided for in the subject Used Fuel Segregated Fund Custodial Agreement or Used Fuel Segregated Fund Management Agreement, and the transfer of assets from one Segregated Fund to the other) specifically authorized to be made from the Used Fuel Segregated

Fund by the terms of this Agreement, in each case to the extent not otherwise Disbursed, shall be paid by Disbursement against a requisition therefor signed by the Payee, subject to compliance with the following procedures:

- (i) The Payee shall have given not less than 30 Business Days prior written notice addressed to (A) the Province (or its agent), (B) the Used Fuel Segregated Fund Custodian, and (C) where the Payee is neither OPG nor an OPG Nuclear Subsidiary, to OPG, for the Disbursement in question specifying the amount requested to be Disbursed, accompanied by the Disbursement statement referred to in subparagraph 3.10.1(c)(ii);
- (ii) The Payee shall have provided to (A) the Province (or its agent), (B) the Used Fuel Segregated Fund Custodian, and (C) where the Payee is neither OPG nor an OPG Nuclear Subsidiary, to OPG, a Disbursement statement containing details as to the proposed use of the proceeds of the Disbursement in question;
- (iii) OPG shall have delivered a certificate of a senior officer (given by such senior officer on behalf of OPG without personal liability) addressed to the Province (or its agent) and to the Used Fuel Segregated Fund Custodian certifying in writing:
 - (A) that such senior officer has read and is familiar with the provisions of this Agreement and that such senior officer has all information necessary to be in a position to certify the matters set out in clauses (B), (C) and (D) of this subparagraph 3.10.1(c)(iii);
 - (B) that all costs or expenses included in the Disbursement statement are Used Fuel Eligible Costs

and identifying, by reference to the then current Approved Budget, the specific Used Fuel Eligible Costs and, separately, the specific Incremental Costs proposed to be satisfied out of the Disbursement proceeds or are otherwise Disbursements specifically authorized to be made from the Used Fuel Segregated Fund by the terms of this Agreement;

- (C) whether, and to the extent that a Default or an Event of Default has occurred, or would occur by reason of receipt of the Disbursement in question; and
- (D) that all requirements of any Applicable Regulator and Applicable Law with respect to the matters identified in the subject Disbursement statement have been met;

provided where the Payee is neither OPG nor an OPG Nuclear Subsidiary, the said certificate shall be provided by OPG within two (2) Business Days following delivery of the said Payee's Disbursement statement under subparagraph 3.10.1(c)(ii);

- (iv) To the extent that any such Disbursement is to be paid (directly or indirectly) to OPG, to an OPG Nuclear Subsidiary or to any Person not dealing at arm's length with any of them, and a Default or an Event of Default has occurred and has not been cured, the part of such Disbursement to be paid (directly or indirectly) to OPG, to an OPG Nuclear Subsidiary or to any Person not dealing at arm's length with any of them, shall not be paid until such Default or Event of Default has been cured; (for greater certainty, for the purposes of this section 3.10, the WMO shall be deemed to deal at arm's length with OPG and each of the OPG Nuclear Subsidiaries); and

- (v) If (A) the 30 Business Day period referred to in subparagraph 3.10(c)(i) has passed and the Province shall not have delivered a Disputed Disbursement Notice, (B) the Province has notified OPG and the Used Fuel Segregated Fund Custodian in writing before the end of such period that it will not deliver a Disputed Disbursement Notice within such period, or (C) the Province has delivered a Disputed Disbursement Notice within such period, and the payment of the Disputed Disbursement shall have been agreed to by OPG and the Province or the Dispute or Financial Issue resolved in favour of paying the Disbursement (in whole or in part), then the amount in question shall then be paid.
- (d) Apart from the foregoing and save as provided in subsection 7.3.2, prior to the wind-up of the Used Fuel Segregated Fund, there shall be no Disbursements (other than fees and expenses of any Used Fuel Segregated Fund Custodian or any Used Fuel Segregated Fund Manager, payment of which is provided for in the subject Used Fuel Segregated Fund Custodial Agreement or Used Fuel Segregated Fund Management Agreement, and the transfer of assets from one Segregated Fund to the other) from the Used Fuel Segregated Fund except as provided by this Agreement.
- (e) Any Disbursement in compliance with the foregoing provisions of this subsection 3.10.1 shall be free of the charge against the Used Fuel Segregated Fund conferred on the Province by section 3.11.

3.10.2 Account Deposit. The Used Fuel Segregated Fund Custodian shall make any permitted Disbursement in Cash into a bank account in the name of the Payee. Where the Payee is OPG, an OPG Nuclear Subsidiary or the WMO (to the extent that OPG can so direct the WMO), such bank account shall be a single-purpose bank account. The Payee may be any other fund or trust which OPG has been obligated to establish under Nuclear Legislation. The Payee shall be entitled to pay Used Fuel Eligible Costs provided for in the

subject Disbursement statement directly from the said bank account to the subject suppliers (including OPG and each OPG Nuclear Subsidiary). The Parties agree to use reasonable efforts to cause each Payee to follow the foregoing procedures to facilitate any audit or tracing of the use and application of all Disbursements from the Used Fuel Segregated Fund by the Province, its agent, an Applicable Regulator under Nuclear Legislation or OPG, should the need arise.

3.10.3 Used Fuel Segregated Fund Surplus.

- (a) Subject to any Applicable Law prohibiting it from doing so, and subject to the maintenance of reasonable reserves as hereinafter provided, the Province shall have the right at any time and from time to time by notice in writing to each of OPG, any other Person entitled to notice under Applicable Law and the Used Fuel Segregated Fund Custodian, first to cancel or reduce all or any part of any then outstanding Provincial Commitment in Lieu and, second, after the entire amount of any Provincial Commitment in Lieu has been cancelled or reduced to nil in accordance with the foregoing, to have Disbursed in Cash to the Province from the Used Fuel Segregated Fund all or any part of the assets remaining in the Used Fuel Segregated Fund, apart from such amount, in each case, to remain in the Used Fuel Segregated Fund (whether represented by a Provincial Commitment in Lieu, Cash, investments or other assets) as the Province, acting reasonably, determines may be required to fund ongoing Used Fuel Eligible Costs (which amount shall in no event be less than 110% of the sum of the Used Fuel Balance to Complete Cost Estimate and the aggregate of any incurred and unpaid Used Fuel Eligible Costs).
- (b) If at any time following any cancellation or reduction of a Provincial Commitment in Lieu, or a portion thereof, or any Disbursement in Cash to the Province under paragraph 3.10.3(a), the Used Fuel Segregated Fund is Under-Funded (provided OPG and the OPG Nuclear

Subsidiaries have made all Payments required by the terms of this Agreement to be made by them to the Used Fuel Segregated Fund as at the date in question), the Province agrees, within 30 days of receiving written notice to that effect from OPG, to make Provincial Payments to the Used Fuel Segregated Fund in such amount (or amounts) from time to time as may be required to fund any unpaid Used Fuel Eligible Costs up to an amount equal to the aggregate of all such Disbursements so made (but not previously repaid pursuant to this paragraph 3.10.3(b)), and no amount of any Provincial Commitment in Lieu so cancelled or reduced (and not previously reinstated pursuant to this paragraph 3.10.3(b)) plus, in each case, the return that such amounts would have earned (calculated using the Discount Rate) had the Commitment in Lieu in question not been so cancelled or reduced, or the Disbursement in question to the Province not been made, provided that the Province pursuant to subparagraph 3.10.3(a) (plus interest thereon as aforesaid) and only once the Province has repaid to the Used Fuel Segregated Fund all Disbursements in Cash made to the Province pursuant to paragraph 3.10.3(a) (plus interest thereon as aforesaid) shall the Province be entitled to reinstate the amount of any Provincial Commitment in Lieu cancelled or reduced pursuant to paragraph 3.10.3(a) in order to repay amounts to the Used Fuel Segregated Fund required under this paragraph 3.10.3(b).

3.11 Provincial Security Interest in Used Fuel Segregated Fund

3.11.1 Grant of Charge to Secure Payment of Used Fuel Eligible Costs and Certain Indemnities.

- (a) Subject to Applicable Law restricting it from doing so, OPG (and each OPG Nuclear Subsidiary to the extent they have an interest in the UFSF Collateral) hereby grants, assigns, mortgages and charges by way of the UFSF Security to and in favour of the Province as a first

charge and security interest in the UFSF Collateral, as general and continuing security for (i) performance by OPG and each OPG Nuclear Subsidiary of their respective obligations to the Province under this Agreement (including their obligations to indemnify the Province set out in subsection 7.4.3 and section 13.4), (ii) the rights and privileges conferred on the Province by the terms of this Agreement and (iii) the payment in accordance with the terms of this Agreement (including the provisions of paragraph 3.11.6(c)) of first, all Used Fuel Eligible Costs other than Incremental Costs and, second, all Incremental Costs.

- (b) The UFSF Security interest shall be perfected by registration of an appropriate financing statement against OPG (and any affected OPG Nuclear Subsidiary) under the *Personal Property Security Act* (Ontario), and by OPG (and each such affected OPG Nuclear Subsidiary) obtaining a discharge (or postponement on terms acceptable to the Province under subsection 3.11.5) of any competing security interests at any time and from time to time attaching to the UFSF Collateral. OPG and each OPG Nuclear Subsidiary acknowledges that, except as set out in this Agreement, the Used Fuel Segregated Fund Custodial Agreement and except as otherwise permitted under Applicable Law, it has no right, power or authority to direct the Used Fuel Segregated Fund Custodian with respect to any Disbursement of any monies from the Used Fuel Segregated Fund.

3.11.2 Confirmation of Charge on Fund Assets. For greater certainty, each OPG Nuclear Subsidiary represents and warrants to the Province that it has no interest in any of the UFSF Collateral. Apart from the UFSF Collateral, other than by operation of the provisions of section 3.2, no other assets or property in which OPG or any OPG Nuclear Subsidiary has an interest shall at any time form part of the UFSF Collateral or be subject to the charge of the UFSF Security.

3.11.3 Certain Representations and Warranties. OPG represents and warrants to the Province that except for the rights conferred on the Province by the UFSF Security and the obligations otherwise imposed by this Agreement, the Used Fuel Segregated Fund Custodial Agreement and by Applicable Law in relation to the Used Fuel Segregated Fund, OPG is, and insofar as any UFSF Collateral acquired after the date hereof will be, the owner of the UFSF Collateral, free from any adverse lien, security, interest, encumbrance or claim of any nature whatsoever apart from Permitted Encumbrances and the UFSF Security, and OPG agrees that it will defend the UFSF Collateral against all claims and demands of all Persons other than the Province and the Used Fuel Segregated Fund Custodian.

3.11.4 Attachment Not Postponed. The attachment of the security interest constituted by the UFSF Security has not been postponed and the UFSF Security shall attach to any particular UFSF Collateral as soon as OPG or any OPG Nuclear Subsidiary has rights in that UFSF Collateral. Any Disbursements from the Used Fuel Segregated Fund in compliance with the provisions of this Agreement shall be free of the charge of the UFSF Security.

3.11.5 Further Assurances. The Parties undertake to execute and deliver such further assurances in respect of the UFSF Security as the Province may from time to time reasonably require. OPG (and each of the OPG Nuclear Subsidiaries to the extent it has an interest in any of the UFSF Collateral) agrees to use commercially reasonable efforts to obtain such postponement(s) of claims in favour of the Province from any Person claiming a competing interest in the UFSF Collateral (or any part thereof) as the Province may reasonably require from time to time to confirm the first charge of the UFSF Security in the UFSF Collateral.

3.11.6 Rights and Remedies. The UFSF Security shall be enforceable on demand by the Province at any time that an Event of Default described in any of item nos. (a), (b), (d) (insofar as compliance with subsection 3.10.1 is concerned) or (g) of the definition of Event of Default has occurred and has not been

cured within the cure periods set out therein or as otherwise agreed to in writing by the Parties. If the Event of Default in question has been cured, without derogation to its other rights under this Agreement, the Province shall not be entitled to enforce, or continue to enforce, the UFSF Security. If at any time the UFSF Security shall become enforceable, then in addition to the rights conferred on the Province under the *Personal Property Security Act* (Ontario), the following provisions shall apply (subject to, and in compliance with, Applicable Law, this Agreement, the Used Fuel Segregated Fund Custodial Agreement, the Used Fuel Segregated Fund Management Agreement(s) and the requirements of any Applicable Regulator):

- (a) the Province may appoint, by notice in writing to OPG and to the Used Fuel Segregated Fund Custodian, a Receiver of all or any part of the UFSF Collateral and remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of the Receiver or any replacement Receiver;
- (b) where the Province is in this section 3.11 referred to, such term shall, where the context permits, be deemed to include reference to any Receiver appointed by the Province and the officers, employees, servants or agent of such Receiver;
- (c) if appointed, such Receiver shall (i) preserve the UFSF Collateral (ii) continue the management of the Used Fuel Segregated Fund in accordance with the terms of both this Agreement and the Used Fuel Segregated Fund Management Agreement(s), and (iii) use the UFSF Collateral and its proceeds first to fund the payment of all Used Fuel Eligible Costs other than Incremental Costs, and second to fund the payment of all Incremental Costs, each at that time outstanding or incurred during the term of its appointment as Receiver (and the performance of the other obligations and rights secured by the UFSF Security) in accordance with the terms of this Agreement;

- (d) the Province may seize, collect, realize, sell, release to third parties or otherwise deal with the UFSF Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable and without notice to OPG or any of the OPG Nuclear Subsidiaries except as otherwise required by any Applicable Law (provided that the UFSF Collateral and any proceeds thereof shall be applied in accordance with subsection 3.11.8, and may charge on its behalf (and pay to others) all reasonable sums for expenses incurred and for services rendered (expressly including legal advice and services, and receivers and accounting fees) in or in connection with taking, perfecting, seizing, collecting, realizing, selling or obtaining payment of the UFSF Collateral, which charges shall be deemed to be Used Fuel Eligible Costs;
- (e) the Province shall not be liable or accountable for any failure to seize, collect, realize, sell or obtain payment of the UFSF Collateral or any part thereof and shall not be bound to institute proceedings for the purpose of seizing, collecting, realizing or obtaining possession or payment of the same or for the purpose of preserving any rights of the Province, OPG or any of the OPG Nuclear Subsidiaries or any other Person in respect of same;
- (f) the Province may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the UFSF Collateral to third parties and otherwise deal with the debtors of OPG or any OPG Nuclear Subsidiaries, sureties and others and with the UFSF Collateral as the Province may see fit without prejudice to the liability of OPG or any of the OPG Nuclear Subsidiaries or the Province's right to realize against the UFSF Collateral under the terms of this Agreement;

- (g) the Province may, if it deems it necessary for the proper realization of all or any part of the UFSF Collateral in accordance with this subsection 3.11.6, pay any encumbrance, lien, claim or charge that may exist or be threatened against the same and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be deemed to be Used Fuel Eligible Costs; and
- (h) if after all the expenses of the Province in connection with the preservation and realization of the UFSF Collateral as above described shall have been satisfied, all obligations of OPG or all of the OPG Nuclear Subsidiaries secured by the UFSF Security shall have been satisfied and all Used Fuel Eligible Costs have been paid in full, any remaining UFSF Collateral shall be dealt with in accordance with the applicable provisions of this Agreement.

3.11.7 Disbursements Following Default or an Event of Default. Notwithstanding a Default or an Event of Default has occurred and has not been cured within the period provided for under the terms of this Agreement, but subject to the rights conferred on the Province under subsection 3.10.1 and paragraphs 3.11.6(d) and (g), the Province agrees to permit Disbursements to be made to any Payee (including, but subject to subparagraph 3.10.1(c)(iv), OPG or any OPG Nuclear Subsidiary) under subsection 3.10.1.

3.11.8 Application of Proceeds. Any UFSF Collateral and any proceeds received by the Used Fuel Segregated Fund Custodian or by the Province in respect of any sale of, collection from, or other realization upon all or any part of the UFSF Collateral shall be applied by the Province first to the payment of any Disbursement required to be made pursuant to section 3.10 or permitted to be made pursuant to either paragraph 3.11.6(d) or (g), second to the payment and discharge of all the obligations of OPG and the OPG Nuclear Subsidiaries under the terms of this Agreement in respect of Used Fuel Eligible Costs other than Incremental Costs, third to the payment and

discharge of all the obligations of OPG and the OPG Nuclear Subsidiaries under the terms of this Agreement in respect of Incremental Costs, and fourth to the payment and discharge of all other obligations of OPG and the OPG Nuclear Subsidiaries under the terms of this Agreement.

Article 4 - DECOMMISSIONING SEGREGATED FUND

4.1 "Decommissioning Eligible Costs" and "Decommissioning Excluded Costs"

For the purposes of this Agreement:

4.1.1 Definition of Decommissioning Eligible Costs. "Decommissioning Eligible Costs" means those reasonable costs described below reasonably relating to the Decommissioning of Stations and Other Facilities (except Repositories), the Management of Nuclear Waste, including Low and Intermediate Level Waste disposal and Nuclear Waste Storage (excluding, for greater certainty, Decommissioning Excluded Costs), incurred (or to be incurred) by or on behalf of OPG or any OPG Nuclear Subsidiary or any other Person who assumes responsibility from OPG or from any one or more OPG Nuclear Subsidiary for all or part of such costs (including any such cost incurred, or to be incurred, by the WMO, CNSC or any other Applicable Regulator under Nuclear Legislation), where such costs are in accordance with an Approved Reference Plan or a Reference Plan that OPG reasonably expects will, in substance, be submitted to and approved by the Province and thereafter, if required, by the Applicable Regulator under Nuclear Legislation in due course, which costs shall be strictly limited to:

- (a) all direct costs reasonably relating to planning, research and development relating to Decommissioning and/or Management of Low and Intermediate Level Waste, including all reasonable legal,

engineering and other costs, including all necessary planning and design costs and all technical, safety and environmental assessments;

- (b) all direct costs reasonably relating to placing a CANDU Reactor at a Station into Safe-Storage after Permanent Shutdown of such CANDU Reactor and all costs reasonably relating to subsequent Safe-Storage of such CANDU Reactor;
- (c) all direct costs reasonably relating to securing and monitoring (i) each CANDU Reactor from and after Permanent Shutdown thereof, (ii) each Station from and after Permanent Shutdown, and (iii) each Other Facility, except a Repository, from and after Permanent Shutdown;
- (d) all direct costs reasonably relating to Safe-Storage of a CANDU Reactor, Station or Other Facility, except a Repository, if applicable, including all costs reasonably relating to securing and monitoring for that CANDU Reactor, Station or Other Facility from and after its Permanent Shutdown;
- (e) all direct costs reasonably relating to Decommissioning each Station and Other Facility, other than a Repository, and of Decommissioning the Site of each such Station and Other Facility, other than a Repository, in compliance with Applicable Law or the Applicable Regulator;
- (f) all direct costs reasonably relating to the Management of Low and Intermediate Level Waste resulting from the Decommissioning of Stations and Other Facilities, other than a Repository and of Decommissioning the Site of each Station or Other Facility (except a Repository);
- (g) all direct costs reasonably relating to restoring the Site of each Station and each Other Facility, other than a Repository, to the standard

required by Applicable Law or any Applicable Regulator after Permanent Shutdown of such Station or Other Facility and all necessary subsequent monitoring and maintenance of the Site;

- (h) all direct costs reasonably relating to providing information to the public and taking such other public affairs steps as circumstances require with respect to (i) Decommissioning and abandonment of a Station or Other Facility (except a Repository), including obtaining Licences required in respect thereof and (ii) the selection, acquisition, obtaining Licences, construction, operation, maintenance and abandonment of any Waste Management Facility, Low and Intermediate Level Waste Facility and/or its respective related Site;
- (i) the following direct costs for transportation, processing and storage of Low and Intermediate Level Waste, being:
 - (i) all costs reasonably relating to transporting Low and Intermediate Level Waste from a Station or Other Facility after Permanent Shutdown of the CANDU Reactor, the operation or Permanent Shutdown of which, generated such Low and Intermediate Level Waste (provided that if it is not possible to determine whether such Low and Intermediate Level Waste was generated from a CANDU Reactor which has been Permanently Shutdown, then this subparagraph 4.1.1(i)(i) only applies to such Low and Intermediate Level Waste after the Station or Other Facility which generated such Low and Intermediate Level Waste has been Permanently Shutdown), to a Waste Management Facility and, handling, containment, radiation protection, processing and storage of the Low and Intermediate Level Waste at such Waste Management Facility, including costs of obtaining Licences and providing information to the public;

- (ii) all costs reasonably relating to processing and storage of Low and Intermediate Level Waste at any Waste Management Facility generated at a Station or Other Facility at any time (including prior to Permanent Shutdown) which is in a state of Permanent Shutdown; and
- (iii) all costs reasonably relating to Decommissioning each Waste Management Facility and Decommissioning the Site of each Waste Management Facility to the standard required by Applicable Law or any Applicable Regulator, and all required subsequent monitoring and maintenance of each such Site;
- (j) the following direct costs for the Management of Low and Intermediate Level Waste, being:
 - (i) all costs reasonably relating to selecting, acquiring and maintaining Sites for one or more Low and Intermediate Level Waste Facilities;
 - (ii) all costs reasonably relating to the development of conceptual, feasibility, preliminary and final designs for a Low and Intermediate Level Waste Facility, its related Site and/or the Management of Low and Intermediate Level Waste;
 - (iii) all costs reasonably relating to making application for, pursuing, and maintaining all required Licences under Applicable Law for any such Low and Intermediate Level Waste Facility and any reasonable legal, engineering and other costs reasonably relating to meeting the requirements to obtaining such Licences, including all costs reasonably relating to necessary technical or environmental assessments and planning and design costs;

- (iv) all costs reasonably relating to providing information to the public and taking such other public affairs steps as circumstances require with respect to the selection, acquisition, licensing, operation, and maintenance of any such Site for any Low and Intermediate Level Waste Facility;
- (v) all costs reasonably relating to the construction of any Low and Intermediate Level Waste Facility in accordance with plans and Licences issued and approved, if required, under Applicable Law;
- (vi) all costs reasonably relating to transporting (including costs of transportation containers) Low and Intermediate Level Waste from a Waste Management Facility, Station or Other Facility to a Low and Intermediate Level Waste Facility or to a Repository;
- (vii) all costs reasonably relating to operating and maintaining any Low and Intermediate Level Waste Facility, including insurance and security costs and costs of handling, containment, radiation protection, processing, disposal or storage of Low and Intermediate Level Waste in a Low and Intermediate Level Waste Facility;
- (viii) all costs reasonably relating to Low and Intermediate Level Waste co-located at the Site of a Repository which would not have been incurred but for the co-location of Low and Intermediate Level Waste at such Site;
- (ix) all costs reasonably relating to obtaining approval for, purchasing, maintaining and loading containers for disposal or storage of Low and Intermediate Level Waste at a Low and

Intermediate Level Waste Facility, which containers have been approved, if required, under Applicable Law for such purpose;

- (x) all costs reasonably relating to the final closure and sealing of, and subsequent maintaining, insurance, monitoring, and security for, each Low and Intermediate Level Waste Facility in compliance with Applicable Law; and
- (xi) all costs reasonably relating to the Decommissioning of each Low and Intermediate Level Waste Facility and Decommissioning of the Site to the standard required by Applicable Law or any Applicable Regulator;

[this paragraph shall for all purposes be subject to the proviso that if a Low and Intermediate Level Waste Facility is located at or adjacent to a Station Site, then only those costs described in paragraph 4.1.1(j) which are incurred solely in relation to such Low and Intermediate Level Waste Facility shall be Decommissioning Eligible Costs by virtue of this paragraph 4.1.1(j).]

- (k) the following direct costs relating to the storage of Used Fuel, being:
 - (i) all costs reasonably relating to storage of Used Fuel at a Station or Waste Management Facility after a CANDU Reactor is Permanently Shutdown, where the Used Fuel was produced by such CANDU Reactor, and thereafter, whether in wet-bays or dry storage, apart from costs of this nature that are Used Fuel Eligible Costs, including costs of obtaining Licences and providing information to the public; and
 - (ii) all costs reasonably relating to Decommissioning facilities for the wet bay and dry storage of Used Fuel (apart from costs of this nature that are Used Fuel Eligible Costs) to the standard

required by Applicable Law or any Applicable Regulator, and all necessary subsequent monitoring and maintenance thereof;

- (l) in the event an Approved Reference Plan has adopted a strategy for the Decommissioning of Stations and Other Facilities and/or the long-term Management of Low and Intermediate Level Waste other than a strategy described in the foregoing provisions of this definition of Decommissioning Eligible Costs, then costs consistent with those listed under paragraphs (a) to (k), as applicable, reasonably relating to the development and implementation of such strategy for the Decommissioning of Stations and Other Facilities and/or the long-term Management of Low and Intermediate Level Waste;
- (m) any cost, or portion thereof, which would not otherwise qualify as a Decommissioning Eligible Cost, where the Province has determined in its sole discretion that:
 - (i) there are reasonable grounds for concluding that such cost is related to the Decommissioning of Stations and/or Other Facilities and/or the long-term Management of Low and Intermediate Level Waste, including waste disposal, long-term storage and Decommissioning of Waste Management Facilities, and is not a Decommissioning Excluded Cost; and
 - (ii) it is in the interests of both the Province and OPG that such cost, or portion thereof, be treated for the purposes of this Agreement as a Decommissioning Eligible Cost.

For greater certainty, the Parties agree that the foregoing right of the Province, being the exercise of an absolute discretion by the Province, cannot be the subject matter of a Dispute or Financial Issue under this

Agreement or of any other proceeding at law initiated by OPG or any OPG Nuclear Subsidiary;

- (n) all costs and expenses deemed to be Decommissioning Eligible Costs under any of paragraphs 4.8.6(d) and (g), subsections 5.4.3, 7.3.2, 7.4.1, 9.3.2, and 11.1.3, section 13.4 and item 8 of Part II of Schedule 11.2, to the extent such costs are not in respect of the Used Fuel Segregated Fund;
- (n.1) all No-Fault Indemnity Payments payable by OPG, the Province or the Ontario Financing Authority from time to time provided the payment, where relating to a service shared among the Segregated Funds, is reasonably allocated to the Decommissioning Segregated Fund;
- (o) all reasonable fees, commissions and expenses of (i) the Decommissioning Segregated Fund Custodian under the Decommissioning Segregated Fund Custodial Agreement, (ii) each Decommissioning Segregated Fund Manager under its respective Decommissioning Segregated Fund Management Agreement and (iii) Persons dealing at arm's length with OPG and each of the OPG Nuclear Subsidiaries performing services related to the custody and management of the Decommissioning Segregated Fund provided that the retainer of those Persons has been agreed to in writing by the Province (or its agent) and OPG, acting reasonably; and
- (p) Other Fund Costs.

4.1.2 Definition of Decommissioning Excluded Costs. "Decommissioning Excluded Costs" means each of those costs described below incurred (or to be incurred) by or on behalf of OPG or any OPG Nuclear Subsidiary or any other Person who assumes responsibility from OPG or any one or more OPG Nuclear Subsidiary for all or part of such costs (including any such cost incurred or to be incurred by the WMO, CNSC or any other Applicable

Regulator under Nuclear Legislation), whether or not relating to the Decommissioning of Stations and Other Facilities or the Management of Low and Intermediate Level Waste:

- (a) any costs arising as a result of a Nuclear Incident at a Station or Other Facility, including all clean-up costs and other costs arising as a result of the Nuclear Incident, such as disposal of property contaminated as a result of any such Nuclear Incident that would not have become Radioactive but for the Nuclear Incident, and all damage claims relating to such Nuclear Incident, including those of third parties, and the liabilities of OPG or the OPG Nuclear Subsidiaries under the *Nuclear Liability Act* (Canada), but only in each case to the extent that any of the costs referred to in this paragraph are in addition to costs which would have occurred had there been no Nuclear Incident;
- (b) any costs resulting from criminal or quasi-criminal offences or from civil proceedings or third party liability claims relating to Decommissioning of Stations and Other Facilities or the Management of Nuclear Waste, except reasonable costs relating to any civil proceedings or third party liability claims that would otherwise have qualified as Decommissioning Eligible Costs;
- (c) any costs related to any Low and Intermediate Level Waste not produced at a Station or not produced at an Other Facility directly or indirectly as a result of the Management of Nuclear Waste which was produced at a Station;
- (d) any severance costs for employees involved in the operation and/or maintenance of a Station or Other Facility during its operational life except for those employees who are retained to maintain the Station or Other Facility in a state of Safe-Storage and/or those employees engaged in Nuclear Waste Management or Decommissioning activities

beyond the end of the Station's Remaining Operating Period or the Other Facility's remaining operating life, as the case may be; and

- (e) any Used Fuel Eligible Costs.

4.2 Nuclear Legislation Decommissioning Fund Requirements

4.2.1 Other Decommissioning Funds. To the extent that any Nuclear Legislation requires OPG or one or more of the OPG Nuclear Subsidiaries to establish one or more funds to provide for the funding of costs relating to the Decommissioning of Stations and Other Facilities (other than any Repository) or the Management of Nuclear Waste (other than costs which are Used Fuel Eligible Costs), then OPG and such OPG Nuclear Subsidiaries agrees with respect to each such fund:

- (a) To the extent that any Nuclear Legislation applies in respect of any Decommissioning Eligible Costs or to the Decommissioning Segregated Fund and any provision of the subject Nuclear Legislation directly conflicts with the provisions of this Agreement, the provision of the Nuclear Legislation in question shall prevail and govern to the extent of any such conflict.
- (b) To the extent that any Nuclear Legislation requires that a fund be established to provide for the funding of Decommissioning Eligible Costs and such Nuclear Legislation prohibits the mixing of the assets of such fund with the assets of another fund, including the Decommissioning Segregated Fund, then OPG and the OPG Nuclear Subsidiaries agree to establish a separate fund substantially similar in all respects to the Decommissioning Segregated Fund to the extent permitted by such Nuclear Legislation (or any Applicable Regulator thereunder) and such separate fund or funds shall be deemed for all purposes of this Agreement to form part of the Decommissioning Segregated Fund. In addition, OPG and the OPG Nuclear Subsidiaries

agree to make Payments in respect of such costs in such amounts and as otherwise required by the said Nuclear Legislation or by the Applicable Regulator thereunder, and to enter into a fund management agreement substantially similar to the Decommissioning Segregated Fund Management Agreement(s) in effect from time to time and a custodial agreement substantially similar to the Decommissioning Segregated Fund Custodial Agreement in effect from time to time in respect of any such fund or funds. OPG and the Province agree to take such steps as may be required from time to time to ensure that the such fund manager(s) and custodian are so engaged.

- (c) Notwithstanding paragraph 4.2.1(b), OPG and the Province agree to take whatever steps are reasonably necessary (including transferring assets from one fund to another) to ensure that to the extent permitted by Applicable Law, the Decommissioning Segregated Fund and any such separate fund or funds established under the previous provisions of this subsection 4.2.1 are treated for all purposes of this Agreement as a single fund, without any duplication by reason of the existence of more than one fund, in respect of each of the matters and procedures contemplated by this Agreement, including Payments to, the OEFC Payment to, permitted Disbursements from, the right of the Province to receive reports, the right of the Province to audit and rights in respect of the surplus from the Decommissioning Segregated Fund or any such separate fund or funds.

4.2.2 Other Fund Costs. To the extent that any Nuclear Legislation requires that there be only one fund, the fund shall be the Decommissioning Segregated Fund, provided that neither the Province nor OEFC shall (save as otherwise specifically provided in this Agreement) assume any financial risk in respect of, or be obligated to pay or fund the payment of, any expense incurred by OPG or any OPG Nuclear Subsidiary that is an Other Fund Cost. OPG and the OPG Nuclear Subsidiaries shall make Payments to the Decommissioning

Segregated Fund as provided in section 4.3 or section 4.6 to fund all Other Fund Costs.

4.3 Decommissioning Segregated Fund Schedules

Based on the assumption that the return on investment (if any) in the Decommissioning Segregated Fund is not subject to tax of any nature whatsoever, OPG has prepared Schedule 4.3 and the information set out in Schedule 4.3 shall be treated in all respects as accurate and complete as at the date hereof. Schedule 4.3 sets out on a Station-by-Station, and calendar-year-by-calendar-year basis estimated Decommissioning Eligible Costs (expressed in constant 1999 Dollars and in nominal year-of-expenditure dollars) based on the 1999 Reference Plan and such further and other relevant information as required by either OPG or the Province, acting reasonably.

4.4 OEFC Payment Obligation to the Decommissioning Segregated Fund

4.4.1 OEFC Payment. Concurrently with this Agreement becoming effective, the Province shall cause OEFC to make the OEFC Payment to the Decommissioning Segregated Fund in the amount of \$2,378,113,937 plus interest calculated at a rate equal to the Discount Rate for a Commitment in Lieu from April 1, 1999 to the date on which the OEFC Payment is made.

4.4.2 Satisfaction of OEFC Payment. The OEFC Payment may be made to the Decommissioning Segregated Fund in any of the following ways:

- (a) by payment in Cash, negotiable securities and/or short-term investments acceptable to the Parties, acting reasonably;
- (b) by the execution and delivery by OEFC of a Commitment in Lieu substantially in the form annexed as Schedule 6.1;
- (c) in accordance with the provisions of paragraph 6.1.3(b), by the increase in the undrawn balance under an outstanding OEFC Commitment in Lieu by endorsement on the grid forming part thereof; or

- (d) by any combination of the foregoing alternatives.

The Province agrees to cause OEFC to comply with the provisions of section 6.1 in respect of any OEFC Commitment in Lieu executed and delivered by OEFC under this section 4.4.

4.4.3 Conditions Precedent to the OEFC Payment and to Each Payment In Cash by OEFC Under the OEFC Commitment in Lieu. Unless otherwise required by Applicable Law and subject to compliance with subsection 5.2.3 and paragraph 6.1.3(a), OEFC shall only be obligated to make the OEFC Payment and payments in Cash to the Decommissioning Segregated Fund under the OEFC Commitment in Lieu required by this Agreement in each case upon delivery by OPG of a duly executed Compliance Certificate addressed to OEFC and to the Decommissioning Segregated Fund Custodian (notwithstanding such Compliance Certificate discloses breaches by OPG or any OPG Nuclear Subsidiary of any of the terms and conditions of this Agreement) dated the date on which OEFC makes the OEFC Payment or a payment under the OEFC Commitment in Lieu in Cash; provided only that OEFC shall not be obligated to do so if as a result of one or more breaches of the Agreement the Province has, at the time the OEFC Payment or payment in Cash under the OEFC Commitment in Lieu is otherwise due, appointed a Receiver under either paragraphs 3.11.6(a) or 4.8.6(a).

4.4.4 Limitation. Apart from the foregoing and subject to the other provisions of this Agreement, including those relating to any Provincial Guarantee, neither the Province nor OEFC shall in any circumstances be obligated at any time to make any payments of any kind or provide other financial support of any nature whatsoever to the Decommissioning Segregated Fund.

4.5 Payment to the Decommissioning Segregated Fund

Concurrently with this Agreement becoming effective, OPG shall make a Payment in Cash and/or negotiable securities and short-term investments acceptable to the Province, acting reasonably, to the Decommissioning Segregated Fund equal to the

amount as of the date this Agreement becomes effective by which (a) the Decommissioning Balance to Complete Estimate under the 1999 Reference Plan as of that date exceeds (b) the aggregate Present Value of the OEFC Payment as of that date.

4.6 Review Decommissioning Segregated Fund Payment Obligations

In addition to any other circumstances specifically provided in this Agreement, Original Payment Schedule 4.6, if and when established, and any subsequent Amended Payment Schedule 4.6 and the quarterly Payment obligations of OPG and the OPG Nuclear Subsidiaries thereunder, shall be established or amended from time to time during the term of this Agreement in accordance with the following:

- 4.6.1 Requirement to Establish or Amend. The amount of the quarterly Payments to the Decommissioning Segregated Fund (as reflected in Original Payment Schedule 4.6, if and when established, or the then current Amended Payment Schedule 4.6 if Original Payment Schedule 4.6 has been replaced) shall be established or revised in accordance with the following provisions of this section 4.6 and the procedures in Schedule 4.6.1 each time that (a) a new or amended Reference Plan becomes an Approved Reference Plan, (b) either OPG or the Province, acting reasonably, makes a determination that the Decommissioning Segregated Fund is subject to tax of any nature whatsoever or, having become subject to such tax, is no longer subject to such tax, whether in whole or in part, (c) it is determined by OPG, acting reasonably, that during any consecutive 12-month period (with duplication of any such period), the Decommissioning Segregated Fund Rate of Return has been greater than the Discount Rate, (d) the Province approves or is deemed to have approved a CNSC Reconciliation Statement under subsection 7.3.4, or (e) any other payment or contribution is made to the Decommissioning Segregated Fund other than a Payment pursuant to Original Payment Schedule 4.6 or an Amended Payment Schedule 4.6, subsections 7.3.5, 9.2.5 or 9.3.4, a Provincial Payment or the OEFC Payment (each of the events in paragraphs (a) through (e) of this subsection 4.6.1 being a "Triggering

Event"). The Original Payment Schedule 4.6 shall be established in accordance with the procedures of this section 4.6 and Schedule 4.6.1 at the time that the first Triggering Event occurs.

- 4.6.2 Determination of Payments. The nominal quarterly Payments to the Decommissioning Segregated Fund shall be calculated as of the date of a Triggering Event as follows:

- (a) Determine Station Amount. The Station Amount to be paid for each Station for each quarter during that Station's Remaining Operating Period shall be determined. The "Station Amount" for a Station as of the date of a Triggering Event shall be the equal nominal amount for each quarter during the Station's then Remaining Operating Period determined so that the aggregate Present Value of each of those equal quarterly nominal amounts plus the Fair Market Value of the assets of the Decommissioning Segregated Fund notionally allocated to that Station equals the Decommissioning Balance to Complete Cost Estimate notionally allocated to that Station, in each case, as of the date of the Triggering Event. For greater certainty, a Station Amount can be either a positive or negative amount.
- (b) Aggregate Quarterly Payments and Right to Net. The nominal quarterly Payment to the Decommissioning Segregated Fund shall equal the aggregate of the Station Amounts for each Station. For greater certainty, if the Station Amount for any Station is a negative amount because the Fair Market Value of the assets of the Decommissioning Segregated Fund notionally allocated to that Station exceeds the portion of the Decommissioning Balance to Complete Cost Estimate notionally allocated to that Station, the Station Amount for that Station shall be calculated as a negative amount which may be deducted or netted against other amounts in determining the aggregate quarterly Payment to the Decommissioning Segregated

Fund. The resultant nominal quarterly Payments shall be set out in the Original Payment Schedule 4.6 or a new or revised Amended Payment Schedule 4.6, as applicable, which shall, if such schedule is not the Original Payment Schedule, replace the then current Amended Payment Schedule 4.6 or Original Payment Schedule 4.6, as the case may be. Notwithstanding the above, the aggregate nominal quarterly Payment cannot be less than nil.

- (c) Tax Over-Contribution. To the extent OPG or the Nuclear Subsidiaries has at any time made any over-contribution to the Decommissioning Segregated Fund by virtue of Payments being previously determined on the basis that the Decommissioning Segregated Fund is subject to tax of any nature or of any amount, the amount of such over-contribution plus interest on the balance thereof (after giving effect to the following provisions of this paragraph 4.6.2(c)) at a rate equal to the Decommissioning Segregated Fund Rate of Return (for the period of time commencing on the date of each over-contribution and ending on the date that such over-contribution to which such interest relates has been applied to reduce the nominal quarterly Payments) shall be applied to reduce the nominal quarterly Payments to the Decommissioning Segregated Fund next falling due until such time as the amount of such over-contribution and interest has been exhausted.
- (d) Assets to be Taken into Account. For the purposes of determining a Station Amount, the assets of the Decommissioning Segregated Fund as of the date of a Triggering Event shall first be adjusted to give effect to: (i) any reimbursement of the Province required pursuant to subsection 7.4.1 in respect of an activity required or permitted to be funded from the Decommissioning Segregated Fund as of that Triggering Event whether or not such reimbursement has actually been made; (ii) any Payments deemed to be made to the Decommissioning Segregated Fund pursuant to subsection 7.4.1 as of that Triggering

Event notwithstanding that OPG may have paid the amount to the Province; and (iii) Provincial Payments or OEFC Payments to the Decommissioning Segregated Fund under subsection 4.7.3 required as of that Triggering Event whether or not such payment has actually been made.

- (e) Allocation of Value of Assets. For purposes of the determination of Payments pursuant to this Agreement only, the Fair Market Value of the assets of the Decommissioning Segregated Fund shall be notionally allocated among the Stations at any time in accordance with the following:
- (i) Each Payment pursuant to Original Payment Schedule 4.6 or an Amended Payment Schedule 4.6 made from time to time shall be notionally allocated to each Station *pro rata* to the Station Amounts for each Station included in such Payment. For greater certainty, any payments by OPG or the OPG Nuclear Subsidiaries to the Province pursuant to subsection 7.4.1 shall be notionally allocated to each Station as if the payments had been made to the Decommissioning Segregated Fund.
- (ii) The OEFC Payment, any Provincial Payments, the initial Payment made by OPG pursuant to section 4.5 and any other payment or contribution made to the Decommissioning Segregated Fund other than a Payment pursuant to Original Payment Schedule 4.6 or an Amended Payment Schedule 4.6 shall be notionally allocated among the Stations *pro rata* to the amount if any, by which, the Decommissioning Balance to Complete Cost Estimate notionally allocated to each Station exceeds the Fair Market Value of the assets of the Decommissioning Segregated Fund notionally allocated to such Station, in each case as of the time of the payment or

contribution, in accordance with the then current Approved Reference Plan.

- (iii) It shall be assumed that all assets of the Decommissioning Segregated Fund earn a rate of return equal to the Discount Rate regardless of the actual rate of return earned on those assets and that such earnings will be allocated to each Station in the same manner as the related assets are allocated pursuant to this section 4.6.

- (f) Allocation of Decommissioning Balance to Complete Cost Estimate and Decommissioning Cost Estimate. For purposes of the determination of Payments pursuant to this Agreement only, the Decommissioning Balance to Complete Cost Estimate and the Decommissioning Cost Estimate shall be notionally allocated among the Stations at any time in accordance with the then current Approved Reference Plan.

- (g) Allocation of Disbursements. For purposes of the determination of Payments pursuant to this Agreement, Disbursements in any calendar year from the Decommissioning Segregated Fund shall, notwithstanding how the Disbursement may actually have been expended, be notionally allocated among the Stations *pro rata* to that year's portion of the Decommissioning Cost Estimate notionally allocated to the Station for such calendar year, in accordance with the then current Approved Reference Plan.

4.6.3 Remaining Operating Period.

- (a) If a new or amended Reference Plan becomes an Approved Reference Plan more than five (5) years prior to the Operating Period End Date for a Station as contained in the previous Approved Reference Plan and such Station has Permanently Shutdown or the Operating Period

End Date in the new Approved Reference Plan is earlier than the Operating Period End Date contained in the previous Approved Reference Plan, then the Remaining Operating Period for that Station shall be the greater of (i) five (5) years from the date of the new Approved Reference Plan and (ii) the Remaining Operating Period for such Station in the new Approved Reference Plan.

- (b) If a new or amended Reference Plan becomes an Approved Reference Plan fewer than five (5) years prior to the Operating Period End Date for a Station as contained in the previous Approved Reference Plan, then the Remaining Operating Period for such Station shall, notwithstanding the foregoing, be the Remaining Operating Period for such Station under the immediately preceding Approved Reference Plan.
- (c) If a Triggering Event occurs after a Station has Permanently Shutdown, and the Fair Market Value of the assets notionally allocated to that Station is not equal to the portion of the Decommissioning Balance to Complete Cost Estimate then notionally allocated to that Station, the Remaining Operating Period for that Station shall be deemed to be five (5) years from the date of the Triggering Event.
- (d) If the amount, if any, as at the date of the Triggering Event, by which the Decommissioning Balance to Complete Cost Estimate exceeds the Fair Market Value of the assets of the Decommissioning Segregated Fund under the then current Approved Reference Plan is greater than such excess amount as at the date of the Triggering Event under the immediately preceding Approved Reference Plan, then the Remaining Operating Period for each Station shall be the greater of the (i) Remaining Operating Period for that Station under the then current Approved Reference Plan and (ii) five (5) years from the date of the Triggering Event.

4.7 Disbursements Out of the Decommissioning Segregated Fund

4.7.1 Disbursements Out of the Decommissioning Segregated Fund.

- (a) Save as hereinafter specifically provided, Disbursements from the Decommissioning Segregated Fund shall only be made pursuant to Approved Budgets and, where applicable, in compliance with the requirements of Nuclear Legislation.
- (b) Those Decommissioning Eligible Costs or other payments described in any of paragraph 4.1.1(n.1), subsection 4.7.3, paragraphs 4.8.6(d) and (g), subsections 5.4.3 and 7.4.1 and section 13.4, and those taxes described in paragraph (b) of section 1.88 of Schedule 1.1, and any other Disbursements specifically authorized to be made from the Decommissioning Segregated Fund by the terms of this Agreement shall be Disbursed against a requisition therefor signed by the Province or its agent alone.
- (c) All Decommissioning Eligible Costs and all other Disbursements (other than fees and expenses of any Decommissioning Segregated Fund Custodian or any Decommissioning Segregated Fund Manager, payment of which is provided for in the subject Decommissioning Segregated Fund Custodial Agreement or Decommissioning Segregated Fund Management Agreement, and the transfer of assets from one Segregated Fund to the other) specifically authorized to be made from the Decommissioning Segregated Fund by the terms of this Agreement, in each case to the extent not otherwise Disbursed, shall be paid by Disbursement against a requisition therefor signed by the Payee, subject to compliance with the following procedures:
 - (i) The Payee shall have given not less than 30 Business Days prior written notice addressed to: (A) the Province (or its agent), (B) the Decommissioning Segregated Fund Custodian, and

- (C) where the Payee is neither OPG nor an OPG Nuclear Subsidiary, to OPG, for the Disbursement in question specifying the amount requested to be paid by Disbursement, accompanied by the Disbursement statement referred to in subparagraph 4.7.1(c)(ii);
- (ii) The Payee shall have provided to (A) the Province (or its agent), (B) the Decommissioning Segregated Fund Custodian, and (C) where the Payee is neither OPG nor an OPG Nuclear Subsidiary, to OPG, a Disbursement statement containing details as to the proposed use of the proceeds of the Disbursement in question;
- (iii) OPG shall have delivered a certificate of a senior officer (given by such senior officer on behalf of OPG without personal liability) addressed to the Province (or its agent) and to the Decommissioning Segregated Fund Custodian certifying in writing:
 - (A) that such senior officer has read and is familiar with the provisions of this Agreement and that such senior officer has all information necessary to be in a position to certify the matters set out in clauses (B), (C) and (D) of this subparagraph 4.7.1(c)(iii);
 - (B) that all costs or expenses included in the Disbursement statement are Decommissioning Eligible Costs and identifying, by reference to the then current Approved Budget, the specific Decommissioning Eligible Costs and separately, the specific Other Fund Costs proposed to be satisfied out of the Disbursement proceeds or are otherwise Disbursements specifically authorized to be

made from the Decommissioning Segregated Fund by the terms of this Agreement;

- (C) whether, and to the extent that a Default or an Event of Default has occurred, or would occur by reason of receipt of the Disbursement in question; and
- (D) that all requirements of any Applicable Regulator and Applicable Law with respect to the matters identified in the subject Disbursement statement have been met;

provided where the Payee is neither OPG nor an OPG Nuclear Subsidiary, the said certificate shall be provided by OPG within two (2) Business Days following delivery of the said Payee's Disbursement statement under subparagraph 4.7.1(c)(ii);

- (iv) To the extent that any such Disbursement is to be paid (directly or indirectly) to OPG, to an OPG Nuclear Subsidiary or to any Person not dealing at arm's length with any of them, and a Default or an Event of Default has occurred and has not been cured, the part of such Disbursement to be paid (directly or indirectly) to OPG, to an OPG Nuclear Subsidiary or to any Person not dealing at arm's length with any of them shall not be paid until such Default or Event of Default has been cured (for greater certainty for the purposes of this section 4.7, the WMO shall be deemed to deal at arm's length with OPG and each of the OPG Nuclear Subsidiaries); and
- (v) If (A) the 30 Business Day period referred to in subparagraph 4.7.1(c)(i) has passed and the Province shall not have delivered a Disputed Disbursement Notice, (B) the Province has notified OPG and the Decommissioning Segregated Fund Custodian in writing before the end of such

period that it will not deliver a Disputed Disbursement Notice within such period, or (C) the Province has delivered a Disputed Disbursement Notice within such period, and the payment of the Disputed Disbursement shall have been agreed to by OPG and the Province or the Dispute or Financial Issue resolved in favour of paying the Disbursement (in whole or in part), then the amount in question shall then be paid.

- (d) Apart from the foregoing and save as provided in subsection 7.3.2, prior to the wind-up of the Decommissioning Segregated Fund, there shall be no Disbursements (other than fees and expenses of any Decommissioning Segregated Fund Custodian or any Decommissioning Segregated Fund Manager, payment of which is provided for in the subject Decommissioning Segregated Fund Custodial Agreement or Decommissioning Segregated Fund Management Agreement, and the transfer of assets from one Segregated Fund to the other) from the Decommissioning Segregated Fund except as provided by this Agreement.
- (e) Any Disbursement shall be free of the charge against the Decommissioning Segregated Fund conferred on the Province and OEFC by section 4.8.

4.7.2 Account Deposit. The Decommissioning Segregated Fund Custodian shall make any permitted Disbursement in Cash into a bank account in the name of the Payee. Where the Payee is OPG, an OPG Nuclear Subsidiary or the WMO (to the extent that OPG can so direct the WMO), such bank account shall be a single-purpose bank account. The Payee may be any other fund or trust which OPG has been obligated to establish under Nuclear Legislation. The Payee shall be entitled to pay Used Fuel Eligible Costs provided for in the subject Disbursement statement directly from the said bank account to the subject suppliers (including OPG and each OPG Nuclear Subsidiary). The Parties agree to use reasonable efforts to cause each Payee to follow the

foregoing procedures to facilitate any audit or tracing of the use and application of all Disbursements from the Used Fuel Segregated Fund by the Province, its agent, an Applicable Regulator under Nuclear Legislation or OPG, should the need arise.

4.7.3 Decommissioning Segregated Fund Surplus.

- (a) OPG may at any time within 60 Business Days following the date on which a Reference Plan becomes an Approved Reference Plan, and OPG shall, on the request of the Province by notice in writing to OPG during that time, determine the Fund Value as at the date on which such Reference Plan becomes an Approved Reference Plan, and report that determination to the Province, together with confirmation by the Decommissioning Segregated Fund Custodian of any information included in the report that was obtained from such Decommissioning Segregated Fund Custodian, including for greater certainty a list of the assets held in the Decommissioning Segregated Fund and the amounts and timing of all Disbursements out of the Decommissioning Segregated Fund to such date. The said confirmation shall be provided to OPG and the Province in writing within 10 Business Days of such request. Absent manifest error, the contents of the confirmation from the said Decommissioning Segregated Fund Custodian shall be final and binding on the Parties.
- (b) Based and relying on the reports referred to in paragraph 4.7.3(a), OPG agrees to calculate each of the Surplus and Tax Surplus, if any. The Province shall review and, acting reasonably, approve OPG's calculation of the Surplus and Tax Surplus. Once the Province and OPG are in agreement as to the amount of each of the Surplus and Tax Surplus, or failing agreement, once the amount of each of the Surplus and Tax Surplus, if any, has been determined under subsection 11.1.3, OPG shall have the right under this paragraph

4.7.3(b), exercisable by notice in writing to both the Province and OEFC, to request that the Province either transfer assets to the Used Fuel Segregated Fund or make a Decommissioning Segregated Fund Matching Payment. Such notice shall specify with respect to the transfer or Decommissioning Segregated Fund Matching Payment, as the case may be, the amounts which are in respect of each of the Surplus and the Tax Surplus.

- (c) Within 10 Business Days of receiving the notice from OPG referred to in paragraph 4.7.3(b), the Province shall in accordance with such notice direct the Decommissioning Segregated Fund Custodian to either (i) transfer assets from the Decommissioning Segregated Fund to the Used Fuel Segregated Fund having a value equal to the aggregate of (A) the lesser of the amount specified in the notice in respect of Surplus and 50% of the Surplus (such lesser amount being the "Special Payment") and (B) the lesser of the amount specified in the notice in respect of the Tax Surplus and the Tax Surplus (such lesser amount being the "Tax Payment") or (ii) make a Disbursement to the Province in an amount equal to the sum of the Special Payment and the Tax Payment. In either case, the Province shall also (subject to paragraph 4.7.3(f)) direct the Decommissioning Segregated Fund Custodian to reduce or cancel the OEFC Commitment in Lieu by an amount equal to the Special Payment and, to the extent that the Special Payment exceeds the outstanding balance of the OEFC Commitment in Lieu, make a Disbursement of such excess in Cash to the OEFC. Upon receipt by the Province of any Disbursement under subparagraph 4.7.3(c)(ii), the Province shall make a Decommissioning Segregated Fund Matching Payment in an amount equal to the said Disbursement.
- (d) To the extent required to fund any such transfers or Decommissioning Segregated Fund Matching Payments to which OPG shall be entitled

under this subsection 4.7.3, the Province agrees to cause OEFC to make a payment in Cash under the OEFC Commitment in Lieu, within 45 Business Days of the Province receiving the notice from OPG under paragraph 4.7.3(b), to the Decommissioning Segregated Fund to the extent that the OEFC Commitment in Lieu is outstanding and not fully drawn.

- (e) Subject to paragraph 4.7.3(g), if at any time following any reduction or cancellation of the OEFC Commitment in Lieu or Disbursement to OEFC pursuant to paragraph 4.7.3(c), the Decommissioning Segregated Fund is Under-Funded, then (provided OPG and the OPG Nuclear Subsidiaries have made all Payments to the Decommissioning Segregated Fund required by the terms of this Agreement to be made by them as at the date in question) the Province shall, within 30 days of receiving written notice to that effect from OPG, cause OEFC to (i) re-instate the OEFC Commitment in Lieu to the extent it was reduced or cancelled pursuant to paragraph 4.7.3(c) (and not previously re-instated under this paragraph 4.7.3(e)) and (ii) make payments in Cash to the Decommissioning Segregated Fund up to the amount Disbursed to OEFC pursuant to paragraph 4.7.3(c) (and not previously repaid under this paragraph 4.7.3(e)), plus in each case the return that such amount would have earned (calculated at the Discount Rate) had the OEFC Commitment in Lieu not been so reduced or cancelled or had the Disbursement to the OEFC in question not been so made, provided that the aggregate amount of any re-instated OEFC Commitment in Lieu and the amount of any payments in Cash by OEFC to the Decommissioning Segregated Fund under this paragraph 4.7.3(e) shall not exceed 50% of the amount by which the Decommissioning Segregated Fund is Under-Funded.
- (f) Within five (5) Business Days of receiving the notice from OPG referred to in paragraph 4.7.3(b), OEFC shall be entitled to assign, by

notice in writing to OPG and the Province, any of its entitlement under paragraph 4.7.3(c) to the Province. Upon receipt of such OEFC notice of the said assignment, OEFC shall no longer be entitled to the reduction or cancellation of the OEFC Commitment in Lieu or to a Disbursement in Cash in the amount so assigned, and the Province shall direct the Decommissioning Segregated Fund Custodian instead to make a Disbursement in Cash to the Province in an amount equal to the amount so assigned by OEFC. To the extent that OEFC assigns to the Province pursuant to this paragraph 4.7.3(f) all or any part of the entitlement in question, such entitlement shall be by way of Disbursement in Cash and the Province agrees to cause OEFC to make a payment in Cash under the OEFC Commitment in Lieu to the Decommissioning Segregated Fund equal to the lesser of the amount so assigned and the outstanding balance of the OEFC Commitment in Lieu within 45 Business Days of the Province receiving the notice from OEFC under this paragraph 4.7.3(f).

- (g) If at any time following a Disbursement to the Province of any amount assigned by OEFC pursuant to paragraph 4.7.3(f), the Decommissioning Segregated Fund is Under-Funded, then (provided OPG and the OPG Nuclear Subsidiaries have made all Payments to the Decommissioning Segregated Fund required by the terms of this Agreement to be made by them as at the date in question) the Province shall, within the 30 day period referred to in paragraph 4.7.3(e), make a Provincial Payment in Cash to the Decommissioning Segregated Fund in such amount as represents the obligations that would otherwise have been imposed on OEFC under paragraph 4.7.3(e) had the Disbursement in question been received by OEFC and not by the Province. OPG and the OPG Nuclear Subsidiaries agree that the agreement by the Province in this paragraph 4.7.3(g) to make Provincial Payment(s) in substitution for OEFC shall fully release OEFC from its obligations under paragraph 4.7.3(e) to the extent of

such Provincial Payments. Upon the resulting Disbursement having been made to the Province, OPG and the OPG Nuclear Subsidiaries agree not claim (or cause the Decommissioning Segregated Fund Custodian to claim) reimbursement from OEFC under paragraph 4.7.3(e) in respect of the amount that would but for the assignment by OEFC have been the obligation of OEFC thereunder, but to look solely to the Province for any Provincial Payments to the Decommissioning Segregated Fund required pursuant to this paragraph 4.7.3(g), and, only after the Province has made all payments it is obligated to make in accordance with the foregoing, look to OEFC for the amount of any entitlement to any amount pursuant to paragraph 4.7.3(e) not so assigned by OEFC to the Province.

4.8 Provincial Security Interest in the Decommissioning Segregated Fund

4.8.1 Grant of Charge to Secure Payment of Decommissioning Eligible Costs and Certain Indemnities.

- (a) Subject to Applicable Law restricting it from doing so, OPG (and each OPG Nuclear Subsidiary to the extent they have an interest in the DSF Collateral) hereby grants, assigns, mortgages and charges, by way of the DSF Security to and in favour of the Province and OEFC as a first charge and security interest in the DSF Collateral, as general and continuing security for (i) performance by OPG and each OPG Nuclear Subsidiary of their respective obligations to the Province and OEFC under this Agreement (including their obligations to indemnify the Province set out in subsection 7.4.3 and section 13.4), (ii) the rights and privileges conferred on the Province and OEFC by the terms of this Agreement and (iii) as security for the payment in accordance with the terms of this Agreement (including the provisions of paragraph 4.8.6(c)) of first, all Decommissioning Eligible Costs other than Other Fund Costs and, second, all Other Fund Costs.

- (b) The DSF Security interest shall be perfected by registration of an appropriate financing statement against OPG (and any affected OPG Nuclear Subsidiary) under the *Personal Property Security Act* (Ontario), and by OPG (and each such affected OPG Nuclear Subsidiary) obtaining a discharge (or postponement on terms acceptable to the Province under subsection 4.8.5) of any competing security interests at any time and from time to time attaching to the DSF Collateral. OPG acknowledges that, except as set out in this Agreement, the Decommissioning Segregated Fund Custodial Agreement and except as otherwise permitted under Applicable Law, it has no right, power or authority to direct the Decommissioning Segregated Fund Custodian with respect to any Disbursement of any monies from the Decommissioning Segregated Fund.

4.8.2 Confirmation of Charge on Fund Assets. For greater certainty, each OPG Nuclear Subsidiary represents and warrants to the Province and OEFC that it has no interest in any of the DSF Collateral. Apart from the DSF Collateral, other than by operation of the provisions of section 4.2, no other assets or property in which OPG or any OPG Nuclear Subsidiary has an interest shall at any time form part of the DSF Collateral or be subject to the charge of the DSF Security.

4.8.3 Certain Representations and Warranties. OPG represents and warrants to the Province and OEFC that except for the rights conferred on the Province and OEFC by the DSF Security and the obligations otherwise imposed by this Agreement, the Decommissioning Segregated Fund Custodial Agreement and by Applicable Law in relation to the Decommissioning Segregated Fund, OPG is, and insofar as any DSF Collateral acquired after the date hereof will be, the owner of the DSF Collateral, free from any adverse lien, security, interest, encumbrance or claim of any nature whatsoever apart from the Permitted Encumbrances and the DSF Security, and OPG agrees that it will defend the DSF Collateral against all claims and demands of all Persons

other than the Province, OEFC and the Decommissioning Segregated Fund Custodian.

4.8.4 Attachment Not Postponed. The attachment of the security interest constituted by the DSF Security has not been postponed and the DSF Security shall attach to any particular DSF Collateral as soon as OPG or any OPG Nuclear Subsidiary has rights in that DSF Collateral. Any Disbursements from the Decommissioning Segregated Fund in compliance with the provisions of this Agreement shall be free of the charge of the DSF Security.

4.8.5 Further Assurances. The Parties undertake to execute and deliver such further assurances in respect of the DSF Security as the Province may from time to time reasonably require. OPG (and each of the OPG Nuclear Subsidiaries to the extent it has an interest in any of the DSF Collateral) agrees to use commercially reasonable efforts to obtain such postponement(s) of claims in favour of the Province and OEFC from any Person claiming a competing interest in the DSF Collateral (or any part thereof) as the Province may reasonably require from time to time to confirm the first charge of the DSF Security in the DSF Collateral.

4.8.6 Rights and Remedies. The DSF Security shall be enforceable on demand by the Province on its behalf or on behalf of OEFC at any time that an Event of Default described in any of item nos. (a), (b), (d) (insofar as compliance with subsection 4.7.1 is concerned) or (g) of the definition of Event of Default has occurred and has not been cured within the cure periods set out therein or as otherwise agreed to in writing by the Parties. If the Event of Default in question has been cured, without derogation to its other rights under this Agreement, the Province shall not be entitled to enforce, or continue to enforce, the DSF Security. If at any time the DSF Security shall become enforceable, then in addition to the rights conferred on the Province and OEFC under the *Personal Property Security Act* (Ontario), the following provisions shall apply (subject to, and in compliance with, Applicable Law, this

Agreement, the Decommissioning Segregated Fund Custodial Agreement, the Decommissioning Segregated Fund Management Agreement and the requirements of any Applicable Regulator):

- (a) the Province may appoint, by notice in writing to OPG and to the Decommissioning Segregated Fund Custodian, a Receiver of all or any part of the DSF Collateral and remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of the Receiver or any replacement Receiver;
- (b) where the Province is in this section 4.8 referred to, such term shall, where the context permits, be deemed to include reference to any Receiver appointed by the Province and the officers, employees, servants or agent of such Receiver;
- (c) if appointed, such Receiver shall (i) preserve the DSF Collateral, (ii) continue the management of the Decommissioning Segregated Fund in accordance with the terms of both this Agreement and the Decommissioning Segregated Fund Management Agreement(s), and (iii) use the DSF Collateral and its proceeds first to fund the payment of all Decommissioning Eligible Costs other than Other Fund Costs and second to fund the payment of all Other Fund Costs, each at that time outstanding or incurred during the term of its appointment as Receiver (and the performance of the other obligations and rights secured by the DSF Security) in accordance with the terms of this Agreement;
- (d) the Province may seize, collect, realize, sell, release to third parties or otherwise deal with the DSF Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable and without notice to OPG or any of the OPG Nuclear Subsidiaries except as otherwise required by any Applicable

Law (provided that the DSF Collateral and any proceeds thereof shall be applied in accordance with subsection 4.8.8), and may charge on its behalf (and pay to others) all reasonable sums for expenses incurred and for services rendered (expressly including legal advice and services, and receivers and accounting fees) in or in connection with taking, perfecting, seizing, collecting, realizing, selling or obtaining payment of the DSF Collateral, which charges shall be deemed to be Decommissioning Eligible Costs;

- (e) the Province shall not be liable or accountable for any failure to seize, collect, realize, sell or obtain payment of the DSF Collateral or any part thereof and shall not be bound to institute proceedings for the purpose of seizing, collecting, realizing or obtaining possession or payment of the same or for the purpose of preserving any rights of the Province, OPG or any of the OPG Nuclear Subsidiaries or any other Person in respect of same;
- (f) the Province may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the DSF Collateral to third parties and otherwise deal with the debtors of OPG or any OPG Nuclear Subsidiaries, sureties and others and with the DSF Collateral as the Province may see fit without prejudice to the liability of OPG or any of the OPG Nuclear Subsidiaries or the Province's right to realize against the DSF Collateral under the terms of this Agreement;
- (g) the Province may, if it deems it necessary for the proper realization of all or any part of the DSF Collateral in accordance with this subsection 4.8.6, pay any encumbrance, lien, claim or charge that may exist or be threatened against the same and in every such case the amounts so paid together with costs, charges and expenses incurred

in connection therewith shall be deemed to be Decommissioning Eligible Costs; and

- (h) if after all the expenses of the Province in connection with the preservation and realization of the DSF Collateral as above described shall have been satisfied, all obligations of OPG or all of the OPG Nuclear Subsidiaries secured by the DSF Security shall have been satisfied and all Decommissioning Eligible Costs have been paid in full, any remaining DSF Collateral shall be dealt with in accordance with the applicable provisions of this Agreement.

4.8.7. Disbursements Following Default or an Event of Default. Notwithstanding a Default or an Event of Default has occurred and has not been cured within the period provided for under the terms of this Agreement, but subject to the rights conferred on the Province under subsection 4.7.1 and paragraphs 4.8.6(d) and (g), the Province agrees to permit Disbursements to be made to any Payee (including, but subject to subparagraph 4.7.1(c)(iv), OPG or any OPG Nuclear Subsidiary) under subsection 4.7.1.

4.8.8. Applications of Proceeds. Any DSF Collateral and any proceeds received by the Decommissioning Segregated Fund Custodian or by the Province in respect of any sale of, collection from, or other realization upon all or any part of the DSF Collateral shall be applied by the Province first to the payment of any Disbursement required to be made pursuant to section 4.7 or permitted to be made pursuant to either paragraphs 4.8.6(d) or (g), second to the payment and discharge of all the obligations of OPG and the OPG Nuclear Subsidiaries under the terms of this Agreement in respect of Decommissioning Segregated Fund other than Other Fund Costs, third to the payment and discharge of all the obligations of OPG and the OPG Nuclear Subsidiaries under the terms of this Agreement in respect of Other Fund Costs, and fourth to the payment and discharge of all other obligations of OPG and the OPG Nuclear Subsidiaries under the terms of this Agreement.

Article 5 -

REFERENCE PLANS AND ANNUAL BUDGETS

5.1 Reference Plans and Annual Budgets

5.1.1 Preparation of Draft Reference Plans and Annual Budgets. OPG agrees to prepare or cause to be prepared (a) when so required by Nuclear Legislation or any Applicable Regulator under Nuclear Legislation, or every five (5) years, whichever is earlier, Reference Plans for Nuclear Waste Management and for Decommissioning Stations and Other Facilities, including Cost Estimates at a level of detail reasonable in the circumstances, and (b) for each calendar year, Annual Budgets consistent with any applicable guidelines established from time to time by the Applicable Regulator under Nuclear Legislation. Any such Reference Plan so prepared by OPG shall, if OPG proposes to have such Reference Plan approved by Applicable Regulators under Nuclear Legislation and/or the Province, be subject to the provisions of sections 5.2, 5.3 and 5.4. The Parties acknowledge that OPG may, subject to section 5.4, submit Reference Plans prepared by the WMO for approval by the Province and then by the Applicable Regulator under Nuclear Legislation.

5.1.2 Preparation of Draft Reference Plans Following a Material Change. Notwithstanding the provisions of subsection 5.1.1, if a material change occurs, OPG agrees to immediately notify the Province in writing to that effect and to prepare or cause to be prepared a new or amended Reference Plan for the Management of Nuclear Waste and/or Decommissioning of Stations and Other Facilities (whichever is affected by the material change) as soon as practically possible and, in any event, prior to any deadline for doing so under Nuclear Legislation. For this purpose, a "material change" includes (a) any reduction in the Remaining Operating Period for any Station that would result in a change in Original Payment Schedule 3.3, the Amended Payment Schedule 3.6, the Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 and (b) any change in circumstances or assumptions which

would reasonably be expected to result in an increase in either the Used Fuel Balance to Complete Cost Estimate or the Decommissioning Balance to Complete Cost Estimate from that based on the then current Approved Reference Plan by more than such percentage (which shall in no case be less than five (5%) per cent) as OPG and the Province agree, acting reasonably, from time to time in writing, and failing agreement such percentage shall be five (5%) per cent.

5.2 Draft Reference Plans and Annual Budgets

5.2.1 Reference Plans. OPG agrees to consult with the Province throughout OPG's preparation of draft Reference Plan documentation and to provide copies of all such then current documentation to the Province from time to time, as and when available, prior to submission to the Applicable Regulator under Nuclear Legislation. It is anticipated by the Parties that the next Reference Plans will be prepared within five (5) years following the execution and delivery of this Agreement unless otherwise agreed to by OPG and the Province in writing or required by Nuclear Legislation or by any Applicable Regulator thereunder.

5.2.2 Annual Budgets. OPG agrees to consult with the Province throughout OPG's preparation of draft Budget documentation and to provide copies of all such then current documentation to the Province no later than 60 days prior to the date on which such draft Annual Budget is to take effect, provided that OPG may submit revised Annual Budget materials to the Province up to 30 days prior to the date such Budget is to take effect. OPG may also submit to the Province revisions to the Approved Budget for a calendar year at any time during that year to the extent necessary.

5.2.3 Estimated Provincial Payments and OEFC Payments in Cash. For each Fiscal Year in which OPG anticipates that either the Province or OEFC shall be required to make payments in Cash, at the time that OPG prepares and delivers each draft Annual Budget it shall prepare draft schedules allocated

by Fiscal Quarters for the Fiscal Year in question for such anticipated payments in Cash by the Province to the Used Fuel Segregated Fund and by OEFC to the Decommissioning Segregated Fund under the OEFC Commitment in Lieu. The Province shall review and, acting reasonably, approve each such schedule. Following such approval, OPG shall provide copies of each such schedule to each of the Province, OEFC and the respective Segregated Fund Custodian. Unless otherwise agreed to in writing by the Province or OEFC, as the case may be, the Segregated Fund Custodian in question shall not be entitled to require a payment in Cash under either paragraph 6.1.2(a) or 6.1.3(a) in any Fiscal Quarter that exceeds the estimate therefor set out in the schedule of payments in Cash so approved by the Province for the Fiscal Year in question.

5.3 Content of Reference Plans

5.3.1 General. Each Reference Plan for Nuclear Waste Management and/or Decommissioning Stations and Other Facilities shall, to the extent possible, contain the same type and detail of information as that contained in the 1999 Reference Plans. Each Reference Plan and Annual Budget shall state all material assumptions upon which it is premised and shall include all information which the Province or its agent would reasonably require to make (or confirm) all the calculations required to prepare updated copies of each of Amended Payment Schedule 3.6, Original Payment Schedule 4.6 or Amended Payment Schedule 4.6.

5.3.2 Reference Plan Contents. Each Reference Plan for Nuclear Waste Management and/or Decommissioning Stations and Other Facilities shall include (a) the Present Value of the aggregate of all Used Fuel Eligible Costs incurred at any time between April 1, 1999 and the date of the Reference Plan, (b) the Present Value of the aggregate of all Decommissioning Eligible Costs incurred at any time between April 1, 1999 and the date of the Reference Plan, (c) the Used Fuel Balance to Complete Cost Estimate as of the date of the Reference Plan, (d) the Decommissioning Balance to

Complete Cost Estimate as of the date of the Reference Plan, and (e) such other information necessary to meet the requirements of any Applicable Regulator under Nuclear Legislation.

5.3.3 Updating Inflation Rate, CPI (Ontario) and the Discount Rate. Based on independent advice and with the approval of the Province, OPG agrees, each time it prepares a new or amended Reference Plan, to update each of (a) the Inflation Rate for each year from the immediately preceding Approved Reference Plan; (b) its forecast of the of the long-term average annual change in CPI (Ontario); and (c) the Discount Rate.

5.4 Approval of Reference Plans and Annual Budgets

5.4.1 Review Procedure and Provincial Approval of Reference Plans. As part of the consultation process contemplated by subsection 5.2.1, OPG and each OPG Nuclear Subsidiary agree to make available to the Province and its advisors, employees, representatives and agents, at their request, all relevant OPG/OPG Nuclear Subsidiary personnel and advisors, and all such underlying data and technical material relied upon by OPG (or such other Person who is preparing the draft Reference Plan in question) in preparing the draft Reference Plan in question. OPG shall formally submit the draft Reference Plan to the Province and request its written approval for such draft Reference Plan. Based on the information available to the Province, including any independent advice taken by the Province, the Province will consult with OPG about, and may, acting reasonably, require OPG to make changes to any part of the subject draft Reference Plan and, subject to Applicable Law, OPG agrees to make the changes to such draft Reference Plan so required by the Province. The Province or its agent shall approve, in writing, the Reference Plan as so changed. OPG agrees to obtain such written approvals for each Reference Plan from the Province or its agent prior to submitting it to the Applicable Regulator under Nuclear Legislation for approval, provided that the Province shall be deemed to have approved a draft Reference Plan submitted for formal approval unless the Province notifies OPG in writing to

the contrary describing in reasonable detail the nature of its objection, within 60 days of the Province receiving the draft Reference Plan for approval from OPG.

5.4.2 Review Procedure and Provincial Approval of Annual Budgets. The Province shall be entitled to review the draft Annual Budget, and to consult with its advisors, Applicable Regulators and with OPG regarding the draft Annual Budget in question. For the purposes of such review, OPG agrees to make available to the Province and its advisors, employees, representatives and agents, at their request, all relevant OPG/OPG Nuclear Subsidiary personnel and advisors, and all such underlying data, technical material, financial information and analyses relied upon by OPG in preparing the draft Annual Budget in question. OPG shall formally submit the draft Annual Budget to the Province and request its written approval for such draft Annual Budget. For purposes of paragraph (a) of the definition of Approved Budget, the Province shall be deemed not to have objected to any amount in the Annual Budget unless the Province notifies OPG in writing of the objection in reasonable detail within 30 days of receiving OPG's request for formal approval. For purposes of paragraph (b) of the definition of Approved Budget, the Province shall be deemed to have approved an Annual Budget unless the Province notifies OPG in writing to the contrary within 30 days of receiving OPG's request for formal approval. OPG agrees to submit only an Approved Budget to an Applicable Regulator under Nuclear Legislation.

5.4.3 Changes Required by Applicable Regulator Under Nuclear Legislation. The Province acknowledges that any Applicable Regulator under Nuclear Legislation may require changes to, or impose conditions on OPG in respect of, any Reference Plan. Subject to the Province's right to appeal the decision of the Applicable Regulator as hereinafter provided, the Province agrees to accept the requirements of the Applicable Regulator imposed on OPG or on an OPG Nuclear Subsidiary. Where the Applicable Regulator under Nuclear Legislation has done so, OPG agrees upon the request of the Province to appeal such of the changes and conditions, as the Province may specify, to a

court of competent jurisdiction or other adjudicative body with jurisdiction to deal with the subject matter of the appeal. In the alternative, OPG and each OPG Nuclear Subsidiary hereby grant to the Province the right and power to initiate and prosecute such appeal procedures in its own name and/or in the names of any OPG Nuclear Subsidiaries. The acceptance by the Province of such change or condition(s) required or imposed by the Applicable Regulator shall be deemed to be deferred pending the outcome of any such appeal; provided, however, OPG and each affected OPG Nuclear Subsidiary agree and shall be permitted to take all necessary action to comply with the requirements of the Applicable Regulator under Nuclear Legislation pending the outcome of any such appeal and any costs incurred in connection therewith shall be deemed to be Used Fuel Eligible Costs to the extent related to the Management of Used Fuel and, otherwise, Decommissioning Eligible Costs.

5.4.4 Delivery of Certified Copies. OPG agrees to provide a copy (certified by a senior officer of OPG without personal liability to be a true and complete copy) of each Approved Reference Plan to the Province forthwith upon its final approval, if any, by any Applicable Regulator.

5.5 Acceptance of Reference Plans and Approval of Annual Budgets

If with respect to any of the obligations of OPG in sections 5.1 to 5.4, a Person other than OPG or any OPG Nuclear Subsidiary, including the WMO, is the relevant person who is required by Applicable Law to perform such obligations, then OPG shall be deemed to have satisfied its obligations if it uses reasonable efforts to cause that Person to comply with those obligations.

**Article 6 -
COMMITMENTS IN LIEU**

6.1 Commitments in Lieu

6.1.1 Documentation.

- (a) If the Province executes and delivers any Provincial Commitment in Lieu permitted under subsection 3.9.2, the Province agrees to ensure that each such Provincial Commitment in Lieu complies with Applicable Law in effect at any time during which the Provincial Commitment in Lieu is issued and outstanding, and continues to comply with Applicable Law for so long as it remains outstanding.
- (b) If OEFC does not make the OEFC Payment in Cash upon this Agreement becoming effective, the Province agrees to cause OEFC to execute and deliver the OEFC Commitment in Lieu at the time contemplated by subsection 4.4.1. The Province also agrees to cause OEFC to ensure that the OEFC Commitment in Lieu complies with Applicable Law in effect at any time during which the OEFC Commitment in Lieu is issued and outstanding, and continues to comply with Applicable Law for so long as it remains outstanding.
- (c) Pursuant to the terms of any Commitment in Lieu delivered by the Province or OEFC under subsections 3.9.2 or 4.4.2, the Province or OEFC (as the case may be) agrees, subject to and in accordance with the provisions of this Agreement, to make payments in Cash to the applicable Segregated Fund in an amount up to the amount of the Commitment in Lieu (as increased or decreased and recorded on the grid forming part of the Commitment in Lieu in accordance with subsections 6.1.2 or 6.1.3, as applicable) plus interest calculated thereon at an annual rate equal to the Discount Rate, calculated daily,

from and after the date of the Commitment in Lieu, all in accordance with the terms of the Commitment in Lieu and this Agreement.

6.1.2 Payments Under Any Provincial Commitment in Lieu.

- (a) Either OPG or the Used Fuel Segregated Fund Custodian shall give not less than 45 Business Days prior written notice to the Province with respect to each payment in Cash to be made by the Province under any Provincial Commitment in Lieu. The Province agrees to pay in Cash the amount set out in the said notice in writing subject to compliance with the provisions of subsections 3.9.3 and 5.2.3 and provided all other assets in the Used Fuel Segregated Fund have been converted to Cash and fully paid by Disbursement (subject only to maintenance of a reasonable and prudent reserve in the Used Fuel Segregated Fund based on the then current Approved Budget). Only then shall the Province be obligated to make a payment or payments in Cash under any outstanding Provincial Commitment in Lieu under this paragraph 6.1.2(a). If the Province makes a payment in Cash to the Used Fuel Segregated Fund under a Provincial Commitment in Lieu, the financial obligation represented by such Provincial Commitment in Lieu shall be reduced by the amount so paid, as provided in paragraph 6.1.2(b), and the proceeds of such payment in Cash (and any returns thereon) shall be used to satisfy Used Fuel Eligible Cost Disbursement requirements until all other assets in the Used Fuel Segregated Fund have been converted to Cash and fully paid by Disbursement (subject only to maintenance of a reasonable and prudent reserve in the Used Fuel Segregated Fund based on the then current Approved Budget).
- (b) Unless a Provincial Commitment in Lieu has been surrendered to the Province for cancellation, the applicable Segregated Fund Custodian shall record and initial any payment in Cash by the Province thereunder and the resulting reduction in the amount thereof on the

grid forming part of the subject Provincial Commitment in Lieu. If the undrawn balance of a Provincial Commitment in Lieu is to be increased, the applicable Segregated Fund Custodian shall record and initial such increase on the grid forming part of the subject Provincial Commitment in Lieu provided, however, that no such increase shall be recorded in an amount that would result in the undrawn balance thereof exceeding the face amount of the subject Provincial Commitment in Lieu. In any circumstance where the face amount of the Provincial Commitment in Lieu would be exceeded or where a cancelled Provincial Commitment in Lieu is to be re-instated, the Province agrees to deliver a new or replacement Provincial Commitment in Lieu with a face amount sufficient to reflect the increase in its obligations to the Segregated Fund in question against delivery to the Province by the Segregated Fund Custodian in question of the then outstanding Provincial Commitment in Lieu (if any). Where there has been a reduction (or an increase) in the undrawn balance of a Provincial Commitment in Lieu arising from the operation of the provisions of subsection 3.10.3, the applicable Segregated Fund Custodian shall make an annotation in the manner provided for on the grid where the reduction (or increase, as the case may be) so arises. All such recorded changes in the undrawn balance of any Provincial Commitment in Lieu shall only be effective if done in accordance with the provisions of the applicable Segregated Fund Custodial Agreement. Where a Provincial Commitment in Lieu is surrendered for cancellation by the Province, the Province agrees to cause the Provincial Commitment in Lieu to be so endorsed as cancelled, and such cancelled Provincial Commitment in Lieu shall be placed in safekeeping for reference should the need arise. The Province shall provide a photocopy of such cancelled Provincial Commitment in Lieu to each of OPG and the applicable Segregated Fund Custodian for their records.

- (c) The Province may at any time and from time to time discharge all or any part of its obligations under a Provincial Commitment in Lieu without notice or bonus by making a payment or payments in Cash to the Used Fuel Segregated Fund.

6.1.3 Payments Under the OEFC Commitment in Lieu.

- (a) Either OPG or the Decommissioning Segregated Fund Custodian shall give not less than 45 Business Days prior written notice to OEFC and to the Province with respect to each payment in Cash to be made by OEFC under any OEFC Commitment in Lieu. The Province agrees to cause OEFC to pay in Cash the amount set out in the said notice in writing subject to compliance with the provisions of subsections 4.4.3 and 5.2.3 and provided all other assets in the Decommissioning Segregated Fund have been converted to Cash and fully paid by Disbursement (subject only to maintenance of a reasonable and prudent reserve in the Decommissioning Segregated Fund based on the then current Approved Budget). Only then shall OEFC be obligated to make a payment or payments in Cash under any outstanding OEFC Commitment in Lieu under this paragraph 6.1.3(a). If OEFC makes a payment in Cash to the Decommissioning Segregated Fund under the OEFC Commitment in Lieu, the financial obligation represented by the OEFC Commitment in Lieu shall be reduced by the amount so paid and recorded on the grid on the reverse side thereof, as provided in paragraph 6.1.3(b), and the proceeds of such payment in Cash (and any returns thereon) shall be used to satisfy Decommissioning Eligible Cost Disbursement requirements until all other assets in the Decommissioning Segregated Fund have been converted to Cash and fully paid by Disbursement (subject only to maintenance of a reasonable and prudent reserve in the Decommissioning Segregated Fund based on the then current Approved Budget).

- (b) Unless the OEFC Commitment in Lieu has been surrendered to OEFC for cancellation, the Decommissioning Segregated Fund Custodian shall record and initial any payment in Cash by OEFC thereunder and the resulting reduction in the amount thereof on the grid forming part of the OEFC Commitment in Lieu. If the undrawn balance of the OEFC Commitment in Lieu is to be increased, the Decommissioning Segregated Fund Custodian shall record and initial such increase on the grid forming part of the OEFC Commitment in Lieu provided, however, that no such increase shall be recorded in an amount that would result in the undrawn balance thereof exceeding the face amount of the OEFC Commitment in Lieu. In any circumstance where the face amount of the OEFC Commitment in Lieu would be exceeded or where a cancelled OEFC Commitment in Lieu is to be re-instated, OEFC agrees to deliver a new or replacement OEFC Commitment in Lieu with a face amount sufficient to reflect the increase in its obligations to the Decommissioning Segregated Fund against delivery to OEFC by the Decommissioning Segregated Fund Custodian of the then outstanding OEFC Commitment in Lieu (if any). Where there has been a reduction (or an increase) in the undrawn balance of the OEFC Commitment in Lieu arising from the operation of the provisions of subsection 4.7.3, the Decommissioning Segregated Fund Custodian shall make an annotation in the manner provided for on the grid where the reduction (or increase, as the case may be) so arises. All such recorded changes in the undrawn balance of the OEFC Commitment in Lieu shall only be effective if done in accordance with the provisions of the Decommissioning Segregated Fund Custodial Agreement. Where the OEFC Commitment in Lieu is surrendered for cancellation by OEFC, the Province agrees to cause the OEFC Commitment in Lieu to be so endorsed as cancelled, and such cancelled OEFC Commitment in Lieu shall be placed in safekeeping for reference should the need arise. The Province agrees to cause a photocopy of such cancelled

OEFC Commitment in Lieu to be provided to each of OPG and the Decommissioning Segregated Fund Custodian for their records.

- (c) OEFC may at any time and from time to time discharge all or any part of its obligations under an OEFC Commitment in Lieu without notice or bonus by making payments in Cash to the Decommissioning Segregated Fund.

6.2 Amount and Fair Market Value of Commitment in Lieu

For all purposes of this Agreement a Commitment in Lieu shall form part of the assets of any Segregated Fund to which the Commitment in Lieu was delivered and the Fair Market Value of the Commitment in Lieu shall equal the Present Value of the Commitment in Lieu.

6.3 Confirmation

The Province agrees to confirm, or to cause OEFC to confirm, its obligations under any Commitment in Lieu as OPG or any Applicable Regulator may reasonably request.

Article 7 - FINANCIAL GUARANTEE

7.1 Provincial Guarantee

- 7.1.1 Obligation of the Province to Provide the Provincial Guarantee. The Province, if requested in writing by OPG, agrees to provide the Provincial Guarantee for OPG and/or any OPG Nuclear Subsidiary on terms to be settled between the Province and the CNSC until the Used Fuel Segregated Fund and/or the Decommissioning Segregated Fund, or any other fund established under sections 3.2 or 4.2, are in the opinion of the CNSC sufficiently funded so as not to require the Provincial Guarantee from the Province.

7.1.2 Financial Guarantee – OPG Nuclear Subsidiaries – Change in Controlling Interest. Notwithstanding subsection 7.1.1, where any Person other than OPG or an OPG Nuclear Subsidiary proposes to acquire a Controlling Interest in an OPG Nuclear Subsidiary owned in whole or in part by OPG, the written consent of the Province to such proposed change in Controlling Interest of an OPG Nuclear Subsidiary under this subsection 7.1.2 shall be required in those circumstances where immediately prior to completion of the transaction that gives rise to such acquisition of a Controlling Interest:

- (a) a Provincial Guarantee is then outstanding directly in favour of the OPG Nuclear Subsidiary in question;
- (b) a CNSC Access Agreement is then outstanding to which the OPG Nuclear Subsidiary in question is a party; or
- (c) OPG and the OPG Nuclear Subsidiary in question have failed to execute and deliver to the Province an acknowledgement in writing to the effect that such OPG Nuclear Subsidiary shall have no entitlement, following such acquisition of a Controlling Interest, to require the Province to provide a Provincial Guarantee to such OPG Nuclear Subsidiary under subsection 7.1.1 or to become party to any CNSC Access Agreement, even if it continues to be an OPG Nuclear Subsidiary following such acquisition of a Controlling Interest.

For greater certainty, the Parties agree that the foregoing right of the Province to give or withhold its consent pursuant to this subsection 7.1.2, being the exercise of an absolute discretion by the Province, cannot be the subject matter of a Dispute or Financial Issue under this Agreement or of any other proceeding at law initiated by OPG or any OPG Nuclear Subsidiary.

7.2 Provincial Guarantee Fee

OPG and the OPG Nuclear Subsidiaries agree to pay an annual fee to the Province equal to one-half of one (0.5%) per cent of the amount of such Provincial Guarantee outstanding during any Fiscal Year. The amount of the Provincial Guarantee shall be determined by the CNSC in the circumstances. If the CNSC fails or declines to reduce the amount of the Provincial Guarantee by all or any part of the property and assets in the subject Segregated Fund (or other fund constituted under sections 3.2 or 4.2, as the case may be), there shall be no reduction in the amount of the Provincial Guarantee on which the fee is calculated under this section 7.2, except as provided for in the next sentence. Where the CNSC fails or refuses to reduce the amount of the Provincial Guarantee by all or any part of any Commitment in Lieu, a sum equal to the amount by which the CNSC so fails or refuses to reduce the amount of the Provincial Guarantee shall be deducted from the amount of the Provincial Guarantee on which the fee is calculated under this section 7.2. For part years, the fee shall be prorated by reference to the number of days in the year the Provincial Guarantee was outstanding. Such annual fee shall be payable by OPG and the OPG Nuclear Subsidiaries at the time the Provincial Guarantee is given and annually thereafter on or before January 31 of each calendar year for that calendar year until the Provincial Guarantee is no longer required. The Parties agree to re-adjust the fee payments as at December 31 in each year on or before January 31 of the following year to reflect the amount of the Provincial Guarantee in effect from time to time during the year then ended. OPG and the OPG Nuclear Subsidiaries agree to pay interest on any overdue payments under this section 7.2 at an annual rate equal to the Prime Rate of Interest plus two (2%) per cent per annum until paid.

7.3 CNSC Access Agreement

- 7.3.1 CNSC Access Agreement. If the CNSC accepts a right of access to one or more of the Segregated Funds (or any of the funds contemplated by either section 3.2 or section 4.2) as satisfying all or part of OPG's Financial Guarantee requirement, OPG and the Province agree to enter into one or more CNSC Access Agreements with the CNSC on terms to be settled

between OPG, the Province and the CNSC. During the term of any such CNSC Access Agreement, OPG and the Province agree, to the extent permitted by Applicable Law, to (i) cause the applicable Segregated Fund Custodians to make all such Disbursements from the applicable Segregated Fund to the appropriate CNSC Payee as required by the terms of the CNSC Access Agreement in question, (ii) to waive any provision of ONFA that would prohibit a CNSC Payee from receiving any Disbursements it is entitled to receive under the CNSC Access Agreement at the time it is entitled to receive them, and (iii) otherwise to take all steps necessary under this Agreement to permit the Province and OPG to comply with their respective obligations under any CNSC Access Agreement.

7.3.2 CNSC Disbursements and Refundable Amounts. Where any amount is Disbursed to a CNSC Payee from the Used Fuel Segregated Fund (or any other fund contemplated by section 3.2) or from the Decommissioning Segregated Fund (or any other fund contemplated by section 4.2) in each case in accordance with a CNSC Access Agreement, to the extent that any such Disbursement is or will be used to pay for:

- (a) any activity required or permitted to be funded from the Used Fuel Segregated Fund, such Disbursement shall be deemed to be a Used Fuel Eligible Cost; and
- (b) any activity required or permitted to be funded from the Decommissioning Segregated Fund, such Disbursement shall be deemed to be a Decommissioning Eligible Cost;

in each case adjusted from time to time to reflect the most recent CNSC Reconciliation Statement or CNSC Reconciliation Update Statement relating to such Disbursement approved or deemed to be approved by the Province, regardless of the Segregated Fund from which the Disbursement was originally made.

To the extent that any Disbursement (and any interest accrued thereon) is not so used or will not be used to pay for any such activity (each, a "**Refundable Amount**"), OPG and the OPG Nuclear Subsidiaries agree to make payments to the Used Fuel Segregated Fund or the Decommissioning Segregated Fund (as the case may be) in accordance with the provisions of subsection 7.3.4, the Refundable Amounts and payments in respect thereof to be allocated between the Segregated Funds as the Province and OPG shall agree to give effect to the rebalancing principles set out in subsection 7.3.5.

7.3.3 CNSC Disbursements Reconciliations. Within 120 days of a CNSC Payee receiving a Disbursement pursuant to the CNSC Access Agreement or the CNSC or a person designated by it receiving a payment pursuant to a Provincial Guarantee, OPG shall prepare or cause to be prepared a draft statement (a "**CNSC Reconciliation Statement**") based on all information then available to it (including information from the CNSC and any CNSC Payee) setting out (a) actual expenditures made out of the Disbursement or Provincial Guarantee payment proceeds and any income accrued thereon, allocated among the following costs; and (b) as to the remaining proceeds of such Disbursement or Provincial Guarantee and any income accrued thereon, expenditures budgeted by the CNSC or its agent with respect to each of:

- (i) Used Fuel Eligible Costs;
- (ii) Incremental Costs;
- (iii) Decommissioning Eligible Costs; and
- (iv) Refundable Amounts;

together with such background information as OPG or the Province may reasonably require. Within 120 days after the end of each Fiscal Year or a refund being made in accordance with subsection 7.3.6, OPG shall provide a draft statement (a "**CNSC Reconciliation Update Statement**") updating the last CNSC Reconciliation Statement and any prior CNSC Reconciliation Update Statement, including explanation of the changes, for each Disbursement or Provincial Guarantee payment based and relying on the then current information available to OPG (including information from the

CNSC). The Province shall have a period of 90 days following receipt of each draft CNSC Reconciliation Statement or draft CNSC Reconciliation Update Statement to conduct a review of each such draft statement, and to consult with its advisors, Applicable Regulators and with OPG regarding the draft statement in question. For the purposes of such review, OPG agrees to make available to the Province and its advisors, employees, representatives and agents, at their request, all relevant OPG/OPG Nuclear Subsidiary personnel and advisors, and all underlying data, information and analyses relied upon by OPG in preparing the draft statement in question. Based on the information available to the Province, the Province may, acting reasonably on notice to OPG within the 90 day period following its receipt of the relevant draft statement, require OPG to make changes to any part of the draft statement. The Province shall in the notice describe in reasonable detail the reason for the change and the information on which the Province has based its requirement for the change. The Province shall be deemed to have approved any draft statement provided to it by OPG under this subsection unless the Province notifies OPG in writing to the contrary in accordance with the foregoing provisions, within 90 days of the Province receiving the draft statement from OPG. OPG agrees to make the changes to such draft statement required by the Province in accordance with this subsection 7.3.3. The Province or its agent shall approve, in writing, the revised statement within 30 days of receiving it, or shall be deemed to have approved such revised statement on the 30th day after receiving it, unless the Province notifies OPG in writing to the contrary describing in reasonable detail the nature of its objection, within 30 days of receiving the revised statement. The Province and OPG shall determine, confirm or recalculate and Refundable Amounts and the schedule of payments required under subsection 7.3.4 on the basis of each CNSC Reconciliation Statement or CNSC Reconciliation Update Statement approved or deemed to be approved by the Province.

7.3.4 Refundable Amount Payments. OPG and the OPG Nuclear Subsidiaries agree to make payments to the Segregated Fund in question on account of each Refundable Amount as follows:

- (a) interest shall be paid to the Segregated Fund in question annually on the principal unpaid balance of each Refundable Amount (except to the extent that such principal amount has been repaid to the Segregated Fund in question pursuant to paragraph 7.3.4(b)) from time to time outstanding at an annual rate equal to the Discount Rate; and
- (b) the principal amount of the Refundable Amount shall be repaid to the Segregated Fund in question in ten equal annual payments, the first such payment to be made on December 31 of the year next following the calendar year in which the Disbursement was made, and the last such payment to be made on the tenth anniversary of the first payment.

The annual payment of principal and interest to the Segregated Fund for each Refundable Amount shall be made on or before December 31 of the year in question, and shall be adjusted annually to reflect any changes in arising out of the provisions of subsection 7.3.3 and subsection 7.3.5.

7.3.5 Re-Balancing of Segregated Funds. If any Disbursements are made from a Segregated Fund to a CNSC Payee pursuant to a CNSC Access Agreement, then notwithstanding any other provisions of this Agreement the Province and OPG agree to cause assets to be transferred between Segregated Funds and all other steps to be taken (including the allocation and recording of amounts in the Segregated Funds) as necessary so that the Parties and each of the Segregated Funds are in the position they would have been in if the Disbursement to the CNSC Payee had been made from the appropriate

Segregated Fund in accordance with this Agreement. To give effect to this principle, within 10 Business Days of a CNSC Reconciliation Statement or CNSC Reconciliation Update Statement being approved or deemed to have been approved by the Province, OPG and the Province shall execute and deliver one or both of the following joint written directions, based on the most recent statement approved or deemed to have been approved:

- (a) direct the Used Fuel Segregated Fund Custodian to transfer assets from the Used Fuel Segregated Fund to the Decommissioning Segregated Fund having a value equal to

A - B

where,

A is the aggregate of Used Fuel Eligible Costs (including Incremental Costs) Disbursed to any CNSC Payee in accordance with section 7.3.2 as reported in the CNSC Reconciliation Statement or CNSC Reconciliation Update Statement most recently approved or deemed to be approved by the Province; and

B is the total amount Disbursed from the Used Fuel Segregated Fund to any CNSC Payee pursuant to section 7.3.2,

provided that such amount shall not be less than nil; and

- (b) direct the Decommissioning Segregated Fund Custodian to transfer assets from the Decommissioning Segregated Fund to the Used Fuel Segregated Fund having a value equal to

C - D

where,

C is the aggregate of Decommissioning Eligible Costs (including Other Fund Costs) Disbursed to any CNSC Payee in accordance with section 7.3.2 as reported in the CNSC Reconciliation Statement or CNSC Reconciliation Update Statement most recently approved or deemed to be approved by the Province; and

D is the total amount Disbursed from the Decommissioning Segregated Fund to any CNSC Payee pursuant to section 7.3.2,

provided that such amount shall not be less than nil;

such transfer to include in each case an amount equal to the interest which would have been earned on the amount equal to the value of the assets to be transferred from the date of the Disbursement to the CNSC Payee to the date of the transfer, at a rate equal to the Discount Rate for the Segregated Fund from which the assets are to be transferred.

7.3.6 CNSC Surplus Payments. If the CNSC, a CNSC Payee or any person designated by the CNSC refunds to or at the direction of OPG, an OPG Nuclear Subsidiary or the Province (i) any part of any Disbursement received by a CNSC Payee pursuant any CNSC Access Agreement or (ii) any payment received by the CNSC or a person designated by it pursuant to a Provincial Guarantee, including in either case the proceeds of such Disbursement or payment, the Parties agree that any such refunded amount shall promptly be directed or paid or retained as follows:

- (a) first, to the Province up to the aggregate of (A) the then outstanding balance of the amount plus any accumulated interest payable to the Province by OPG and the OPG Nuclear Subsidiaries under subsection 7.4.1 (but without regard to subsection 7.4.2), and (B) the outstanding principal amount plus accumulated interest of any indemnity payment payable to the Province under subsection 7.4.4;
- (b) secondly, to each Segregated Fund up to the amount by which such Segregated Fund is then Under-Funded, in each case pro rata to the amount by which each Segregated Fund is Under-Funded;
- (c) thirdly, to OPG up to the aggregate Present Value of all amounts previously paid by OPG or the OPG Nuclear Subsidiaries to reimburse the Province under subsections 7.4.1 and 7.4.4; and
- (d) the balance, if any, to the Decommissioning Segregated Fund.

The parties agree that any amount paid to or retained by the Province under paragraph subsection 7.3.6 (a) shall reduce the outstanding amounts required to be reimbursed to the Province under subsection 7.4.1 and 7.4.4.

7.4 Provincial Guarantee Reimbursement Obligation

7.4.1 Payment from Fund to Extent of Fund Assets. If at any time the Province is required to make a payment following a claim under a Provincial Guarantee, to the extent such payment is or will be used to pay for:

- (a) an activity required or permitted to be funded from the Used Fuel Segregated Fund, such payment shall be deemed to be a Used

Fuel Eligible Cost in respect of which the Province shall have a right to be reimbursed out of the Used Fuel Segregated Fund; and

- (b) an activity required or permitted to be funded from the Decommissioning Segregated Fund, such payment shall be deemed to be a Decommissioning Eligible Cost in respect of which the Province shall have a right to be reimbursed out of the Decommissioning Segregated Fund;

in each case adjusted from time to time to reflect the most recent CNSC Reconciliation Statement or CNSC Reconciliation Update Statement relating to such payment approved or deemed to be approved by the Province. The Province shall be reimbursed pursuant to the foregoing provisions of this subsection 7.4.1:

- (a) from the Used Fuel Segregated Fund notwithstanding subsection 5.2.3 and paragraph 6.1.2(a), firstly, by reducing the amount outstanding under any Provincial Commitment in Lieu by an amount equal to the lesser of (i) the amount by which the Province is to be reimbursed hereunder and (ii) the said amount outstanding under any Provincial Commitment in Lieu; and secondly, from the assets of the Used Fuel Segregated Fund, to the extent that any part of the amount to be reimbursed to the Province under this paragraph 7.4.1(a) remains outstanding after giving effect to the foregoing; and
- (b) from the Decommissioning Segregated Fund notwithstanding subsection 5.2.3 and paragraph 6.1.3(a), firstly, from the assets of the Decommissioning Segregated Fund, and secondly to the extent that any part of the amount to be reimbursed to the Province under this paragraph 7.4.1(b) remains outstanding after giving effect to the foregoing and an OEFC Commitment in Lieu is then

outstanding, the Province shall cause OEFC make a payment in Cash to the Decommissioning Segregated Fund up to the lesser of (i) an amount equal to the said reimbursement amount outstanding to the Province and (ii) the amount outstanding under any Commitment in Lieu. The Cash so paid by OEFC shall then be used to reimburse the Province from the Decommissioning Segregated Fund pursuant to the foregoing provisions of this subsection 7.4.1.

To the extent that such reimbursement is prohibited by Applicable Law or the applicable Segregated Fund Custodian otherwise fails to reimburse the Province, OPG and the OPG Nuclear Subsidiaries agree to pay an amount equal to the amount of the payment made by the Province following a claim under a Provincial Guarantee plus interest on the balance thereof from time to time (taking into account each such payment by OPG or any of the OPG Nuclear Subsidiaries as it is made) at a rate equal to the Discount Rate for the applicable Segregated Fund (for a period of time commencing on the date on which the Provincial Guarantee payment in question was made and ending on the date on which the Province is paid) but only up to the amount of Payments to the subject Segregated Fund next falling due until the amount in question plus interest (calculated as aforesaid) is paid to the Province in full.

7.4.2 Payment Credits. Except as set out in subsection 7.4.3, the Province shall bear the risk that OPG and the OPG Nuclear Subsidiaries are not obligated to make Payments equal to the amount of the required reimbursement. The Parties shall require the Used Fuel Segregated Fund Custodian or Decommissioning Segregated Fund Custodian, as applicable, to credit the amount of such payments by OPG to the Province pursuant to subsection 7.4.1 as if such payments had been made as Payments to the Used Fuel Segregated Fund or Decommissioning Segregated Fund, as applicable, and OPG and the OPG Nuclear Subsidiaries shall be deemed to have discharged

their obligations to make such Payments to the amount of each such payment so made. However, to the extent Applicable Law does not permit such amounts to be credited against Payments to the applicable Segregated Fund or to the extent complying with subsection 7.4.1 does not fully discharge any obligation of OPG and the OPG Nuclear Subsidiaries to make such payments under Applicable Law, OPG and the OPG Nuclear Subsidiaries shall not be obligated to pay such amounts to the Province.

7.4.3 Indemnity to Extent No Fund Assets. OPG and each OPG Nuclear Subsidiary agree to indemnify the Province from and against any payment made by the Province under a Provincial Guarantee which cannot be reimbursed out of either of the Segregated Funds and which is not reimbursed by OPG and the OPG Nuclear Subsidiaries pursuant to subsection 7.4.1, but only to the extent the payment required to be made by the Province under a Provincial Guarantee exceeds the Fair Market Value of the Used Fuel Segregated Fund (excluding any fund established under section 3.2 where the terms of the Financial Guarantee require the fair market value of such fund to be applied to reduce the amount of Financial Guarantee required by the CNSC) or the Fair Market Value of the Decommissioning Segregated Fund (excluding any fund established under section 4.2 where the terms of the Financial Guarantee require the fair market value of such fund to be applied to reduce the amount of Financial Guarantee required by the CNSC), as the case may be, determined at the time the payment is made and is not so reimbursed, together with interest thereon calculated as set out in subsection 7.4.4. However, OPG agrees to fully indemnify the Province under a Provincial Guarantee when such payment does not relate to an activity required or permitted to be funded from either the Used Fuel Segregated Fund or the Decommissioning Segregated Fund.

7.4.4 Indemnity Payments. OPG and the OPG Nuclear Subsidiaries agree to make payments to the Province on account of the said indemnity as follows:

- (a) interest shall be paid to the Province annually on the principal amount of each payment made by the Province under a Provincial Guarantee for which OPG is required to indemnify the Province under subsection 7.4.3, except to the extent that such principal amount has been repaid to the Province pursuant to paragraph 7.4.4(b), from time to time outstanding at an annual rate equal to the then current Prime Rate of Interest plus two (2%) per cent not in advance; and
- (b) the principal amount of each such payment made by the Province under a Provincial Guarantee for which OPG is required to indemnify the Province under subsection 7.4.3 shall be repaid in equal annual payments for each of the ten years ending after the end of the year in which the Province has made the Provincial Guarantee payment in question. The annual payment of principal and interest to the Province for a year shall be made on or before December 31 of such year.

7.5 Financial Guarantee Confirmation

- 7.5.1 Confirmation - Province. The Province further agrees to confirm its obligations under any Provincial Guarantee or CNSC Access Agreement as any Applicable Regulator may reasonably require.
- 7.5.2 Confirmation - OPG. OPG further agrees to confirm its obligations under any CNSC Access Agreement as any Applicable Regulator may reasonably require.

Article 8-

TERM AND TERMINATION OF THIS AGREEMENT

8.1 Term

- 8.1.1. Term. Once the conditions precedent to this Agreement taking effect set out in subsection 8.1.2 have been satisfied (or waived in writing by both OPG and the Province), this Agreement shall be effective as of April 1, 1999

and subject to any contrary requirement of Applicable Law or of any Applicable Regulator that this Agreement remain in force and effect) shall continue in force until the earlier of:

- (a) the date on which this Agreement is terminated by written agreement of all the Parties; or
- (b) if a request for termination is made by a Party and all Parties then agree in writing that substantially all of the Decommissioning Eligible Costs and substantially all of the Used Fuel Eligible Costs to be paid from the respective Segregated Funds or any other fund established under the terms of this Agreement have been paid in full, and any amount owing by OPG and the OPG Nuclear Subsidiaries to the Province or OEFC under section 2.4 have been paid in full, the date agreed to by the Parties,

provided, however, on such date no CNSC Access Agreement or Provincial Guarantee is then outstanding.

- 8.1.2. Conditions Precedent to Binding Agreement. This Agreement shall not take effect until OPG and the Province have executed and delivered each of the Segregated Fund Custodial Agreements and each of the Segregated Fund Management Agreements on terms and conditions acceptable to the Province and OPG. Notwithstanding subsection 8.1.1, upon this Agreement taking effect, OPG and the OPG Nuclear Subsidiaries shall be deemed to have complied with all of their respective obligations under this Agreement relating to the period prior to the date on which the foregoing conditions precedent are satisfied or waived. The Province and OPG shall use all reasonable efforts to have executed and delivered each of the Segregated Fund Custodial Agreements and each of the Segregated Fund Management Agreements as soon as practical after the execution and delivery of this Agreement.

8.2 Final Accounting

Not less than 180 days prior to the termination of this Agreement under section 8.1, OPG agrees to prepare a written report and accounting (in form and content satisfactory to the Province, acting reasonably) addressed to the Province and OEFC in respect of each of the Segregated Funds, which report shall include a determination of each of (a) the aggregate of all Used Fuel Eligible Costs incurred up to that time (b) a current Used Fuel Balance to Complete Cost Estimate (c) the aggregate of all Decommissioning Eligible Costs incurred up to that time (d) a current Decommissioning Balance to Complete Cost Estimate and (e) similar reports in respect of any other fund established under the terms of this Agreement. Based on the foregoing report and accounting, the Province and OPG agree to determine, acting reasonably, the extent (if any) to which any Segregated Fund is Under-Funded and the extent (if any) to which the then Fair Market Value of the assets of any Segregated Fund exceeds the Balance to Complete Cost Estimate of such Segregated Fund in each case after giving effect to subsection 4.7.3 without the requirement for a new Approved Reference Plan (for the purposes of this section 8.2, an "Excess"). Having made the foregoing determinations in respect of each Segregated Fund, the Parties obligated by the terms of this Agreement to make any Payment or a Provincial Payment in Cash to any such Segregated Fund shall do so and, in the case of the Province, the Province shall, and shall cause OEFC to, make any payments to such Segregated Fund pursuant to subsections 6.1.2 and 6.1.3 in each case within 120 days of the said report and accounting having been accepted by the Province. Once all such payments in Cash have been made, the Province and OPG shall cause the Segregated Fund Custodian to deliver any then outstanding Commitment in Lieu in the subject Segregated Fund to its issuer for cancellation. Subject to Applicable Law and the requirements of any Applicable Regulator under Nuclear Legislation, for each Segregated Fund with an Excess, the Province shall then have the right to requisition a Disbursement to it and/or to OEFC (as the Province may determine) in an aggregate amount equal to the Excess in question by notice in writing to the subject Segregated Fund Custodian with a copy to OPG. Each such Excess so requisitioned by the Province shall be paid to the Province (and/or OEFC, as the case may be) within 30 Business Days of the requisition in

question having been made (or any Dispute of Financial Issue in respect thereof completed). This section 8.2 shall govern the distribution of any Excess in any Segregated Fund notwithstanding any other provision of this Agreement otherwise governing the entitlement and procedures relating to the Surplus (including subsection 4.7.3) and Used Fuel Segregated Fund surplus (including subsection 3.10.3).

Article 9 - RECORDS AND AUDITS

9.1 General

With respect to each of the Segregated Funds and any other fund established pursuant to the terms of this Agreement, OPG and each OPG Nuclear Subsidiary shall maintain, or cause to be maintained, (and to the extent that OPG can so direct any Payee and the WMO, if and when constituted, shall cause the Payee and WMO to maintain) accurate and complete accounting records for all Eligible Costs, Incremental Costs, Other Fund Costs, Station Amounts, Payments, Provincial Payments, the OEFC Payment (and any payments in Cash made by OEFC under the OEFC Commitment in Lieu), Segregated Fund and other fund returns, Disbursements and all other relevant information relating to this Agreement and its administration, all in accordance with GAAP for the period ending on a date not less than six (6) years following termination of this Agreement. OPG and each OPG Nuclear Subsidiary shall permit the Province and its employees, representatives and agents, upon giving at least 24 hours prior notice, to have access to, to inspect and to make extracts from and copies of its books, records and accounts in which such records are maintained (wheresoever located) during normal business hours on any Business Day, and to have access to all appropriate personnel and advisors to answer questions regarding such books and records. OPG and each OPG Nuclear Subsidiary agree to provide the Province and its employees, representatives and agents with the opportunity to ask questions of, and be briefed by appropriate OPG or OPG Nuclear Subsidiary personnel and advisors in respect of such books, records and accounts.

9.2 Separate Accounts

9.2.1 Used Fuel Segregated Fund. OPG shall maintain or cause to be maintained separate accounting records for the Used Fuel Segregated Fund in which it will be recorded and allocated on a Station-by-Station basis (a) each Payment and each Provincial Payment to the Used Fuel Segregated Fund, (b) each Disbursement from the Used Fuel Segregated Fund, (c) each Disbursement from the Used Fuel Segregated Fund to the Province (including any indemnity payment made to the Province under the terms of this Agreement), (d) receipt of each Decommissioning Segregated Fund Matching Payment, (e) each transfer of assets to another Segregated Fund or receipt of a transfer of assets from another Segregated Fund, and (f) the fees and any indemnified amount owed to the Province in respect of any Provincial Guarantee. OPG shall also record or cause to be recorded the assets and liabilities of the Used Fuel Segregated Fund, including returns earned by the Used Fuel Segregated Fund. OPG shall adjust or cause to be adjusted the accounts to reflect any change which should be made to its records as a result of any matter set out in any Disbursement Reconciliation.

9.2.2 Decommissioning Segregated Fund. OPG shall maintain or cause to be maintained separate accounting records for the Decommissioning Segregated Fund in which it will be recorded and allocated on a Station by Station basis (a) the OEFC Payment, each Payment to the Decommissioning Segregated Fund, and any Provincial Payment to the Decommissioning Segregated Fund, (b) each Decommissioning Segregated Fund Matching Payment, (c) each Disbursement from the Decommissioning Segregated Fund, (d) each Disbursement from the Decommissioning Segregated Fund to the Province and/or OEFC (including any indemnity payment made to the Province and/or OEFC under the terms of this Agreement), (e) each transfer of assets to another Segregated Fund or receipt of a transfer of assets from another Segregated Fund, and (f) the fees and any indemnified amount owed to the Province in respect of any Provincial Guarantee. OPG shall also record or cause to be recorded the assets and liabilities of the

Decommissioning Segregated Fund, including returns earned by the Decommissioning Segregated Fund. OPG shall adjust or cause to be adjusted the accounts to reflect any change which should be made to its records as a result of any matter set out in any Disbursement Reconciliation.

9.2.3 Allocation for Incremental Costs and Tax Costs. OPG shall maintain or cause to be maintained separate accounts for Incremental Costs and for Tax Costs and shall allocate or cause to be allocated to each such account: (a) all Payments to the applicable Segregated Fund made to fund Incremental Costs or Tax Costs, as applicable; and (b) an amount equal to the income which would have been earned on such Payments from time to time if they had earned a rate of return equal to the Used Fuel Segregated Fund Rate of Return or the Decommissioning Segregated Fund Rate of Return, as applicable, during the period from the date of receipt of the Payment. OPG shall deduct or cause to be deducted from each such account each Disbursement for Incremental Costs or Tax Costs, as applicable. The relevant Balance to Complete Cost Estimate and the relevant Cost Estimate shall notionally be allocated to the account for Incremental Costs or Tax Costs, as applicable, among the Stations in accordance with then current Approved Reference Plan.

9.2.4 Effect of Allocations. The Parties agree that notwithstanding that separate accounts may be maintained for each Station and Other Facility or otherwise (including as required by Nuclear Legislation or an Applicable Regulator under Nuclear Legislation) (a) the entire Used Fuel Segregated Fund is available for Disbursements to pay any Used Fuel Eligible Costs; and (b) the entire Decommissioning Segregated Fund is available for Disbursements to pay any Decommissioning Eligible Costs. The Decommissioning Segregated Fund shall not be available for Disbursements to pay any Used Fuel Eligible Costs other than as may be specifically provided in this Agreement. The Used Fuel Segregated Fund shall not be available for Disbursements to pay any Decommissioning Eligible Costs, save as otherwise permitted by the terms of this Agreement. Notwithstanding the foregoing, subject to and in compliance

with the terms of any CNSC Access Agreement then in effect, the CNSC has the right on demand from time to time in those circumstances described in the CNSC Access Agreement to have paid to a CNSC Payee up to the entire balance of each of the Used Fuel Segregated Fund and Decommissioning Segregated Fund.

- 9.2.5 GST Payments. To the extent that OPG or any OPG Nuclear Subsidiary has received a Disbursement from the Segregated Funds to compensate it for the payment of any goods and services taxes imposed by the *Excise Tax Act* (Canada), any rebate of such payment or input tax credit in respect thereof received or claimed by OPG or any OPG Nuclear Subsidiary shall forthwith on receipt by it, or upon the benefit of any such claim being enjoyed by it, be paid to the Segregated Fund in question in an amount equal to such refund or claim and the corresponding Disbursement shall not be treated as Eligible Costs for any purpose, provided that OPG and the OPG Nuclear Subsidiaries shall have no further obligation to reimburse such amount to the relevant Segregated Fund (pursuant to section 9.3.4 or otherwise) if the payment required by this subsection 9.2.5 is made.

9.3 Auditor

- 9.3.1 Auditor. The Province and OPG shall jointly appoint an auditor (the "Auditor") who shall have the right to conduct those audits permitted by the terms of this Agreement (other than under subsections 9.3.3 and 9.3.4), and to prepare annual reports in respect of each of Used Fuel Eligible Costs and Decommissioning Eligible Costs, and in respect of payments to, earnings by and Disbursements from each of the Segregated Funds and any other funds established in accordance with the terms of this Agreement. Unless otherwise waived in writing by the Province, any Auditor so appointed shall not otherwise have a business relationship with OPG. If the Province and OPG cannot agree on the selection of an Auditor, the names of each of the major accounting firms qualified to practice in the Province of Ontario shall be typed on cards and placed in a sealed container, and the first name drawn by lot

from such container by a representative of the Province shall be the Auditor appointed under this subsection 9.3.1 subject only to settling terms and conditions of such appointment with the Auditor in question. Each Auditor's appointment shall be for a term of one year unless renewed by agreement of such Auditor and each of OPG and the Province. The foregoing process shall be followed by OPG and the Province for the appointment of each replacement Auditor under the terms of this Agreement, provided only that the name of the outgoing Auditor shall not be included in the roster of candidates submitted for drawing by lot, as aforesaid.

- 9.3.2 Auditor Expenses. All reasonable costs and expense of an Auditor appointed under subsection 9.3.1 shall be deemed to be Eligible Costs of the Segregated Fund in respect of which the Auditor has provided services.
- 9.3.3 Disbursement Reconciliations. Commencing with the Fiscal Quarter during which the conditions precedent set out in subsection 8.1.2 have been satisfied (or waived in writing by both OPG and the Province), within 30 days after the end of each Fiscal Quarter and within 90 days following the end of each Fiscal Year, OPG agrees to provide to the Province a Disbursement Reconciliation for each Segregated Fund for the preceding Fiscal Quarter or Fiscal Year, as the case may be, including for greater certainty all fund or funds contemplated by this Agreement, from which Disbursements may be made. Notwithstanding the foregoing, if the date on which the conditions precedent set out in subsection 8.1.2 have been satisfied (or waived in writing by both OPG and the Province) occurs after December 31, 2002, it shall, nevertheless be deemed for the purposes of this subsection 9.3.3 to have occurred on January 1, 2003, and the Province shall then be entitled to receive Disbursement Reconciliations for each Fiscal Year commencing with OPG's 2002 Fiscal Year and for each Fiscal Quarter commencing with OPG's Fiscal Quarter ending March 31, 2003. The Parties agree to take such steps and enter into such agreements as may be necessary to ensure that the Province, its advisors, employees, representatives and agents and those of any Applicable Regulator shall, at all times on reasonable notice to OPG or

any other Payee (as the case may be) have the right to have access to, to inspect, to audit and to make extracts from, and copies of, all relevant books and records of OPG or the Payee (as the case may be) and the right to interview and obtain information from the subject Segregated Fund Custodian, OPG personnel and advisors, employees and representatives of the Payee regarding such books and records and the use to which any Disbursement has been put. Insofar as Payees who are the WMO or who are at arm's length with OPG or with any OPG Nuclear Subsidiary are concerned, the foregoing obligations shall be limited to reasonable efforts in the circumstances.

- 9.3.4 Audit of Eligible Costs. Once a Disbursement has been paid from a Segregated Fund, all amounts included in that Disbursement shall be deemed for all purposes to be Eligible Costs, except as provided in this subsection 9.3.4 or in section 7.3. If the Province conducts an audit pursuant to subsection 9.3.3 and the Province's auditor for this purpose determines that an amount included in a Disbursement from the subject fund (other than a Disbursement to a CNSC Payee pursuant to a CNSC Access Agreement) was not applied to pay an Eligible Cost or was not properly Disbursed, the Province shall notify OPG to that effect and OPG shall within 10 Business Days reimburse the fund in question in Cash in an amount equal to the amount in question plus interest thereon calculated at the Discount Rate from the date of the Disbursement to the date of the reimbursement. If the auditor has not made such a determination and the Province has not so notified OPG within 180 days after the Province receives a Disbursement Reconciliation for the subject fund for a Fiscal Year, all amounts included in that Disbursement Reconciliation shall, notwithstanding subsection 9.3.3, be deemed for all purposes to be Eligible Costs and, where they are Used Fuel Eligible Costs, no such amount shall be excluded from the Approved Cost Estimate.

9.4 Financial Statements and Other Information

- 9.4.1 Financial Statements. OPG shall, as soon as practicable and in any event within 120 days after the end of each Fiscal Year, prepare or cause to be prepared annual financial statements for the Segregated Fund in question (including any fund referred to in or constituted under either section 3.2 or section 4.2), which annual financial statements shall be audited, and reported on by the Auditor in accordance with GAAP. The audited annual financial statements shall include a statement of assets, a statement of investment income, a statement of the investment portfolio, a statement of changes in assets to the end of the Fiscal Year, a statement of Disbursements, and any other statement or statements which may be required by Applicable Law, GAAP or requested by OPG or the Province in writing, acting reasonably. If requested by OPG or the Province and so required under the relevant Segregated Fund Management Agreement, the Segregated Fund Managers shall provide to OPG and the Province an estimate of the Fair Market Value of one or more assets in a Segregated Fund (including any fund referred to in or constituted under either section 3.2 or section 4.2) for the most recent Fiscal Quarter then ended to each of OPG and the Province, regardless of who may have made the request for the value of the fund in question, within 30 days of the end of such Fiscal Quarter. In addition to the foregoing, OPG shall provide, or cause to be provided, to the Province all other reports and information regarding the Segregated Funds (including any fund referred to in or constituted under either section 3.2 or section 4.2), including actuarial reports, as OPG or the Province may from time to time reasonably request in writing.
- 9.4.2 Reports. OPG shall, as soon as practicable and in any event within 30 days after the end of each Fiscal Quarter, prepare or cause to be prepared, a report in form and content acceptable to the Province, acting reasonably, addressed to the Province, setting out (a) all Payments and Provincial Payments, and any payments in Cash made by the Province under any Provincial Commitment in Lieu or the OEFC Payment and any payments in

Cash made by OEFC under the OEFC Commitment in Lieu, (b) all Disbursements, (c) all Decommissioning Segregated Fund Matching Payments, (d) all transfers of assets from one Segregated Fund to another, and (e) all earnings or losses on the assets of the Segregated Fund (including any fund referred to in or constituted under either section 3.2 or section 4.2).

Article 10 -

REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of OPG and the OPG Nuclear Subsidiaries

Each OPG Nuclear Subsidiary and OPG represents and warrants to the Province (in its own right and for the benefit and account of OEFC) as follows and acknowledges that the Province is relying upon the following representations and warranties in connection with the execution of this Agreement:

10.1.1 Incorporation. Each OPG Nuclear Subsidiary and OPG is duly incorporated and validly exists under the laws of the Province of Ontario.

10.1.2 Corporate Power, Due Authorization and Binding Agreement. Each OPG Nuclear Subsidiary and OPG has the corporate power and capacity to enter into and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by each OPG Nuclear Subsidiary and OPG and is a valid and binding obligation of each of them enforceable in accordance with its terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies.

10.1.3 No Contravention. The execution, delivery and performance of this Agreement by each OPG Nuclear Subsidiary and OPG does not and will not contravene the provisions of its respective articles, by-laws, constating documents or other organizational documents or any other agreement to which it is a party or by which it is bound.

10.1.4 Approvals and Consents. All necessary authorizations, consents or approvals of, or filings with or notices to, any Governmental Body, including the Applicable Regulator, or any other Person, have been obtained to permit the execution, delivery and performance of this Agreement by each OPG Nuclear Subsidiary and OPG.

10.1.5 No Defaults. OPG and the OPG Nuclear Subsidiaries (and, to the best of OPG's knowledge, any other Person operating any Station or Other Facility), hold all necessary Licences required by the *Nuclear Safety and Control Act* (Canada) for their respective Stations and Other Facilities and none of them is in material violation of any such Licence or any Applicable Law. No Default or Event of Default has occurred and remains outstanding.

10.2 Investigation Does Not Affect Representations

Any investigation by a Party and/or its advisors shall not mitigate, diminish or affect the representations and warranties of the other Parties.

10.3 Survival

Each of the following shall survive the termination of this Agreement and be enforceable by the Province and OEFC against OPG and each OPG Nuclear Subsidiary and where applicable by OPG against the Province and OEFC: the representations and warranties of OPG and each OPG Nuclear Subsidiary contained in this Agreement; and the provisions of each of sections 2.4, 3.11, 4.8, 7.4, 9.4, 13.4, 14.4 and Article 11 and Schedule 11.2.

Article 11 -

VALUATION AND DISPUTE RESOLUTION

11.1 Valuation Procedures

11.1.1 Financial Issue. Any dispute relating to any matter that is a Financial Issue shall be resolved under subsection 11.1.3.

- 11.1.2 Disputes Other Than Financial Issues. Any dispute relating to any matter that is not a Financial Issue shall be resolved under section 11.2.
- 11.1.3 Financial Professional. Any Financial Issue shall be determined by a Financial Professional. Either OPG or the Province may notify the other Party that a Financial Issue has arisen. The Province shall select the Financial Professional to adjudicate the Financial Issue in question within five (5) Business Days of the notice being delivered. As soon as practically possible after the selection of the Financial Professional by the Province, each of OPG and the Province agrees to provide the other and the Financial Professional with its calculation of the relevant amount, together with all backup information required or reasonably requested by the Financial Professional, to the extent it has previously performed such calculation. Each of the Province and OPG shall have the right to provide to the other and to the Financial Professional such response to the materials previously provided by the other Party within 30 days of receipt thereof. The Province and OPG otherwise agree to provide the Financial Professional and each other with all relevant information in a timely manner and in form and content reasonably required by the Financial Professional. Based and relying on such filed material, the Financial Professional will make its preliminary determination on the Financial Issue within 30 days after receiving the responding materials, if any, or the deadline for receiving responding materials having expired or, if not applicable, within 30 days after receiving all relevant information from the Province and OPG. Each of OPG and the Province shall have the right to make further written submissions to the Financial Professional within 10 days following delivery of its preliminary determination. The Financial Professional shall consider any such further written submissions and shall within 10 days after receipt thereof either confirm or vary its initial determination. Subject to section 44 of the *Arbitration Act, 1991* (Ontario), the final determination of the Financial Professional shall be final and binding on OPG and the Province and there shall be no appeal of the Financial Professional's decision whatsoever, including any appeal to a court on a question of law, a question

of fact, or a question of mixed law and fact. The application of subsection 7(2) of the *Arbitration Act, 1991* (Ontario) is expressly excluded. The expenses of the Financial Professional shall be borne by the Segregated Fund(s) in question and shall be deemed to be an Eligible Cost of the subject Segregated Fund.

11.2 Dispute Resolution Procedure

Any Dispute shall be determined in accordance with Schedule 11.2 that sets out the sole and exclusive procedure for the resolution of Disputes. The resolution of a Dispute pursuant to the terms of Schedule 11.2 shall, subject to section 44 of the *Arbitration Act, 1991* (Ontario), be final and binding upon the Parties and there shall be no appeal from the decision of the Arbitrator(s), including any appeal to a court on a question of law, a question of fact, or a question of mixed law and fact. The application of subsection 7(2) of the *Arbitration Act, 1991* (Ontario) is expressly excluded.

11.3 Exercise of Discretion

The exercise of a discretion expressly conferred on one Party alone by the terms of this Agreement cannot, for the purposes of this Agreement, be the subject matter of a Dispute or a Financial Issue. Notwithstanding the foregoing, where a Party is required by the terms of this Agreement to act reasonably in making a decision or providing an approval, the question of whether it has acted reasonably may be the subject matter of a Dispute or a Financial Issue.

11.4 OPG and the Province Alone

Any Dispute and any Financial Issue that an OPG Nuclear Subsidiary may wish to initiate shall only be done by it through OPG as agent or otherwise. Any Dispute or Financial Issue that OEFC may wish to initiate shall only be done by it through the Province as agent or otherwise.

**Article 12 -
Transferability**

12.1 Transfers - General

Neither this Agreement nor the rights and obligations of OPG or any OPG Nuclear Subsidiary under this Agreement may be Transferred, amended or otherwise changed, in whole or in part, without the prior written approval of the Province, which approval may be granted, with or without conditions, or withheld in the sole discretion of the Province. For greater certainty, the Parties agree that the foregoing right of the Province, being the exercise of an absolute discretion by the Province, cannot be the subject matter of a Dispute, either under this Agreement or under any other proceeding at law initiated by OPG or any OPG Nuclear Subsidiary.

12.2 Prompt Notification

12.2.1 Notice of Certain Transactions.

- (a) OPG agrees promptly to notify and advise the Province in writing upon OPG or any OPG Nuclear Subsidiary entering into serious discussions relating to any of the following events and such notice shall include copies of relevant documents and a brief description of the event and OPG's views regarding the impact of the event on the matters dealt with in this Agreement:
 - (i) if the licensed operator for any Station or Other Facility changes to a Person other than OPG or an OPG Nuclear Subsidiary;
 - (ii) if any Person other than OPG or an OPG Nuclear Subsidiary acquires a Controlling Interest in a Station or Other Facility;
 - (iii) if any Person other than OPG or an OPG Nuclear Subsidiary acquires a Controlling Interest in any OPG Nuclear Subsidiary;
or

- (iv) a subsidiary of OPG becomes an OPG Nuclear Subsidiary;

provided that an acquisition of a Controlling Interest in OPG shall be deemed to not constitute any of the foregoing events (i), (ii) or (iii).

- (b) At least 30 Business Days prior to the closing of any transaction arising out of any of the events referred to in subparagraphs 12.2.1(a)(i), (ii) or (iii), OPG agrees to provide to the Province copies of the then current agreements and other documents proposed to be or which have been executed and delivered by OPG or any OPG Nuclear Subsidiary owned in whole or in part by OPG in respect of the proposed transaction. OPG agrees to provide the Province and its advisors with a reasonable opportunity prior to the said closing to ask questions of, and be briefed by, appropriate personnel and advisors of OPG or any such OPG Nuclear Subsidiary in respect of the event in question.
- (c) Notwithstanding anything to the contrary in this subsection 12.2.1, if neither OPG nor any OPG Nuclear Subsidiary owned in whole or in part by OPG is a party to any of the agreements relating to any of the events referred to in subparagraphs 12.2.1(a)(i), (ii) or (iii), OPG shall not be required to comply with any of the foregoing provisions of this subsection 12.2.1.
- (d) With respect to any Transfer to which section 12.1 applies, OPG agrees to provide such notices, documentation, analysis, copies of documentation and opportunity to the Province to meet with appropriate personnel and ask questions in respect of the transaction giving rise to the Transfer in the manner and at the times described in paragraphs 12.2.1(a) and (b) as if such paragraphs applied to the transaction giving rise to such Transfer.

12.3 Provincial Consent to Certain Transactions

Unless the Province has first provided to OPG or an OPG Nuclear Subsidiary, as applicable, its prior written consent, with or without conditions (any such conditions to be reasonable in the circumstances) and such consent not to be unreasonably withheld or delayed, neither OPG nor any applicable OPG Nuclear Subsidiary shall close any transaction referred to in any of subparagraphs 12.2.1(a)(i), (ii) or (iii). In determining whether or not to provide its consent or whether or not to impose conditions on its consent under this section 12.3, the Province shall only consider the effect, if any, of the transaction on the ability of OPG, and the ability of any applicable OPG Nuclear Subsidiary, to perform its obligations under this Agreement.

12.4 Written Acknowledgement

No approval of any Transfer under section 12.1 shall be effective unless the proposed Transferee (or Person who acquires the interest in question) has first executed and delivered an acknowledgement addressed to the Parties (in form and substance acceptable to the Province) under which such Transferee or Person agrees to be bound by the provisions of this Agreement. Upon any subsidiary of OPG becoming an OPG Nuclear Subsidiary, such subsidiary shall execute and deliver an acknowledgement, as aforesaid.

Article 13 - EVENTS OF DEFAULT

13.1 Events of Default

If any Event of Default shall occur and be continuing, then the Province may in its sole discretion by delivery of a Default Notice exercise any one or more of the remedies provided for in section 13.3. For greater certainty, the Parties agree that the foregoing right of the Province to exercise its remedies (but for greater certainty not its determination as to whether an Event of Default has occurred), being the exercise of an absolute discretion by the Province, cannot be the subject matter of a Dispute or

Financial Issue under this Agreement or of any other proceeding at law initiated by OPG or any OPG Nuclear Subsidiary. Any Event of Default that is cured within the applicable cure period (or within such further or other cure period consented to in writing to by the Province, or compliance in respect of which is waived by the Province) shall be deemed not to be a continuing Event of Default under the terms of this Agreement.

13.2 Notice of Default

Each of OPG and the OPG Nuclear Subsidiaries agrees that it shall, as soon as practicable and in any event within five (5) Business Days after the occurrence of each Default or Event of Default, deliver a written statement of its chief financial officer or its chief operating officer or any other senior officer (given by such officer on behalf of OPG or the subject OPG Nuclear Subsidiary without personal liability) setting forth the details of such Default or Event of Default and the action which OPG or any OPG Nuclear Subsidiary proposes to take or has taken with respect thereto.

13.3 Remedies Upon Default

13.3.1 Provincial Right to Initiate Actions. At any time following the delivery of a Default Notice, the Province may, at its discretion, commence such legal action or proceedings as it, in its sole discretion, may deem expedient, including, the commencement of enforcement proceedings under this Agreement, or making of an application for a mandatory injunction to require OPG and/or one or more of the OPG Nuclear Subsidiaries to comply with any obligation imposed on it by the terms of this Agreement. For greater certainty, the Parties agree that the foregoing right of the Province, being the exercise of an absolute discretion by the Province, cannot be the subject matter of a Dispute or Financial Issue under this Agreement or of any other proceeding at law initiated by OPG or any OPG Nuclear Subsidiary.

13.3.2 Rights Cumulative. The rights and remedies of the Province hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies available to the Province by contract, Applicable Law or either of

section 3.11 or 4.8. Nothing contained herein nor any act or omission of the Province shall in any way prejudice or affect the rights, remedies and powers of the Province hereunder.

- 13.3.3 Injunctive Relief. Each Party acknowledges and agrees that any material breach by OPG or any of the OPG Nuclear Subsidiaries of their respective material obligations under this Agreement would constitute immediate and irreparable harm to the Province, and that the Province shall be entitled to specific performance or injunctive relief to enforce any such material obligation in addition to whatever remedies the Province may be otherwise entitled to at law or in equity, without being required to prove irreparable harm or to post a bond or other security.

13.4 Indemnity

OPG and each OPG Nuclear Subsidiary hereby jointly and severally covenant and agree to indemnify and hold each of the Indemnified Parties harmless from, and to pay to each such Indemnified Party on demand any amounts required to compensate such Indemnified Party for any claim or loss suffered by, imposed on or asserted against such Indemnified Party as a result of, in respect of, connected with or arising out of any of: (a) a default (whether or not constituting a Default or an Event of Default) by OPG or any OPG Nuclear Subsidiary hereunder; (b) any proceedings brought by a third party against the Province as a result of its performance of its obligations under this Agreement or providing any Commitment in Lieu or the Financial Guarantee; (c) any proceedings brought by a third party against OEFC due to OEFC performing its obligations under this Agreement or providing an OEFC Commitment in Lieu; or (d) any proceedings brought by a third party against the Province or OEFC arising as a result of the use of the proceeds from either of the Segregated Funds, provided that if any amount required to compensate an Indemnified Party under any of the foregoing provisions would, if incurred by OPG, be a Used Fuel Eligible Cost or a Decommissioning Eligible Cost, such amount will not be indemnified under this section 13.4, but instead shall be deemed to be a Used Fuel Eligible Cost or Decommissioning Eligible Cost, as the case may be, in respect of which the Province

shall have a right to be reimbursed out of the Used Fuel Segregated Fund or Decommissioning Fund, as applicable.

Article 14 -

GENERAL

14.1 Compliance with this Agreement

OPG and each OPG Nuclear Subsidiary agree to comply at all times with the terms and conditions of this Agreement and if an obligation of OPG must be performed by an OPG Nuclear Subsidiary, OPG agrees to cause that OPG Nuclear Subsidiary to perform such obligation and OPG agrees to cause any required meetings to be held, votes to be cast, resolutions to be passed, documents to be executed and all other things and acts to be done to ensure that OPG and each affected OPG Nuclear Subsidiary does so. The Province agrees to comply at all times with the terms and conditions of this Agreement and to cause OEFC to comply with all obligations to be performed under the Agreement by OEFC and agrees to make all reasonable efforts in the circumstances to cause any required meetings to be held, votes to be cast, resolutions to be passed, documents to be executed and all other things and acts to be done to ensure that both it and OEFC do so.

14.2 Compliance with Applicable Law

Each Party agrees to comply at all times with the requirements of all Applicable Law in performing its obligations under this Agreement.

14.3 Changes in Applicable Law

If it becomes necessary to change the structure of the Segregated Funds to comply with the requirements of Applicable Law or any Applicable Regulator, the Province and OPG agree to negotiate in good faith such amendments to this Agreement as may be necessary to comply with such changes.

14.4 Confidential Information

14.4.1 Confidential Information. Except to the extent required to perform its obligations under this Agreement, and subject to the right to disclose Confidential Information to any Financial Professional, Arbitrator, outside counsel, auditor, financial consultant or other advisor, each Party agrees not to disclose to any Person Confidential Information which is provided to it to assist it in performing its duties under this Agreement, including Reference Plans, Annual Budgets and Cost Estimates, unless and to the extent that (a) the Confidential Information is or becomes publicly known through no fault of such Party or (b) such Party (as the case may be) is required to disclose such Confidential Information by the order of a court of competent jurisdiction or Applicable Law, including the *Freedom of Information and Protection of Privacy Act* (Ontario). Each page of Confidential Information shall be clearly and prominently marked with the legend "CONFIDENTIAL", but failure to so mark each page shall in no way diminish a Party's obligations with respect to that Confidential Information.

14.4.2 Prejudice to Competitive Position. The Province acknowledges that OPG has informed it that the Confidential Information to be supplied to the Province (or to its representatives) by OPG (or by its representatives) under the terms of this Agreement will include trade secrets, scientific information, technical information, commercial information and/or financial information, the disclosure of which would either prejudice OPG's competitive position or interfere significantly with OPG's contractual or other negotiations and such disclosure would result in undue loss to OPG or gain for OPG's competitors.

14.5 OPG Reports

Each of OPG and the OPG Nuclear Subsidiaries agrees promptly upon the issuance thereof, to provide to the Province as reasonably requested by the Province copies of all notices, reports, press releases, circulars, offering documents and other documents filed by OPG or any OPG Nuclear Subsidiary with, or delivered to, any

Governmental Body in any jurisdiction relating to Management of Nuclear Waste or Decommissioning of Stations or Other Facilities, including copies of all WMO documentation which in any way relates to the subject matter of this Agreement. In addition to the foregoing, OPG and each OPG Nuclear Subsidiary agree to provide, and to cause the WMO (if and when constituted and to the extent that OPG is able) to provide to the Province as reasonably requested by the Province all other reports and information regarding Management of Nuclear Waste or Decommissioning of Stations or Other Facilities by OPG and the OPG Nuclear Subsidiaries as the Province may from time to time reasonably request in writing, including draft documents shared with staff of any Applicable Regulator under Nuclear Legislation relating to the Management of Nuclear Waste or the Decommissioning of Stations or Other Facilities.

14.6 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or by delivery by hand to the applicable address noted below either to the individual designated below or to an individual at that address having apparent authority to accept deliveries on behalf of the addressee. Any notice or other communication if sent by facsimile after 4:00 p.m. (Toronto time) shall be deemed to have been received on the Business Day following the successful transmission thereof, or if delivered by hand after 4:00 p.m. (Toronto time) shall be deemed to have been received on the next Business Day. Notice of change of address shall also be governed by this section 14.6. Notices and other communications shall be addressed as follows:

(a) If to the Province:

Ministry of Finance
6th Floor, Frost Building South
7 Queen's Park Crescent East
Toronto ON
M7A 1Y7

Attention: The Assistant Deputy Minister
Ontario Electricity Restructuring Secretariat
Telecopier No.: (416) 325-1565

(b) If to OEFC:

Ontario Electricity Financial Corporation
14th Floor
1 Dundas Street West
Toronto, ON
M7A 1Y7

Attention: Chief Executive Officer
Telecopier No.: (416) 325-8327

(c) If to OPG or to any of the OPG Nuclear Subsidiaries:

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

Attention: General Counsel
Telecopier No.: (416) 592-1466

14.7 Time of Essence

Time is of the essence of this Agreement.

14.8 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect its construction or interpretation.

14.9 Gender, Number and Persons

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders. Any reference to a Person in this Agreement shall be deemed to be reference

to the respective heirs, executors, administrators, personal representatives, successors and permitted assigns of such Person. The Parties agree that each of the Province and OEFC shall have the right to delegate any of their respective rights and obligations under this Agreement to an agent duly appointed by the Province or OEFC, as the case may be, and the Province agrees to provide (and agrees to cause OEFC to provide) confirmation in writing to OPG as it may reasonably require of the authority and power of any such agent so appointed by the Province or OEFC, as aforesaid, provided that any such delegation shall in no way relieve, release or discharge either the Province or OEFC from any of its respective liabilities or obligations under this Agreement.

14.10 Currency

All references to "dollars", "Dollars", "\$" or amounts referred to in currency shall mean references to Canadian currency.

14.11 "Including"

The words "including", "include", "includes" and "included" when used in this Agreement mean "including, without limitation," "include, without limitation", "includes without limitation," and "included, without limitation," respectively.

14.12 Generally Accepted Accounting Principles

Except as otherwise specifically provided in this Agreement, all accounting terms shall be applied and construed in accordance with GAAP.

14.13 Statutes

Any reference in this Agreement to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the statute, regulation, rule or provision, as amended, re-enacted or replaced from time to time.

14.14 Entire Agreement

This Agreement, each of the agreements referred to in subsection 8.1.2, any documentation arising out of the operation of either of sections 3.2 and 4.2, the OEFC Commitment in Lieu, any Provincial Commitment in Lieu, any Financial Guarantee, any side letter or other agreement in writing exchanged between the Province and OPG relating to the sharing of certain indemnity costs and any amendment to any of the foregoing made in compliance with section 14.15 constitute the entire agreement among the parties hereto pertaining to the subject matter of this Agreement and supersedes and replaces all other prior agreements and understandings. There are no representations, warranties or conditions (expressed or implied) and there are no agreements in connection with that subject matter except as specifically set forth or referred to in this Agreement or the agreements referred to above. No reliance is placed on any representation, warranty, opinion, advice or assertion of fact made either before, at the time of, or after entering into this Agreement, or any amendment or supplement to it, by any Party or its employees, directors, officers or agents, to any other Party or its directors, officers or agents, except to the extent reduced to writing and included as a term of this Agreement, or the agreements referred to above. None of the Parties has been induced to enter into this Agreement or any amendment or supplement by reason of any representation, warranty, opinion, advice or assertion of fact not specifically set forth or referred to in this Agreement, or the agreements referred to above. Accordingly, there shall be no liability, either in tort or in contract, assessed in relation to any representation, warranty, opinion, advice or assertion of fact not specifically set forth or referred to in this Agreement, or the agreements referred to above.

14.15 Waiver and Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound by the amendment or waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

14.16 Payments in Cash

Wherever this Agreement requires an amount to be paid (including any Payment, the OEFC Payment, any Provincial Payment, any payment under the Financial Guarantee or any Disbursement), such payment shall be made when due in Cash unless otherwise expressly provided for by the terms of this Agreement.

14.17 Determination of Rates of Return

The assumptions and methodology used by any Party in calculating any of the Used Fuel Segregated Fund Rate of Return, the Decommissioning Segregated Fund Rate of Return, and all historical and other rates of return for the purposes of this Agreement shall in all circumstances be to the satisfaction of the Province, acting reasonably.

14.18 Compliance with the Requirements of Applicable Regulator

The Parties acknowledge that Applicable Law or an Applicable Regulator may require OPG to structure one or more of the Segregated Funds or any other funds established under this Agreement in a manner otherwise than as provided by this Agreement, the Segregated Fund Custodial Agreements and the Segregated Fund Management Agreements. The Province agrees to take into account any such requirement of Applicable Law or the Applicable Regulator in effect from time to time, and to facilitate OPG's or an OPG Nuclear Subsidiary's compliance therewith. OPG and the OPG Nuclear Subsidiaries acknowledge that earnings of the Segregated Funds may

be adversely affected by the treatment of the Segregated Funds under the *Income Tax Act* (Canada).

14.19 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 in the Province of Ontario.

14.20 Further Assurances

Each of the Parties otherwise agrees to promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things another Party may reasonably require from time to time for the purpose of giving effect to this Agreement and agrees to use reasonable efforts and to take all the steps as may be reasonably within its power to implement to the fullest extent the provisions of this Agreement.

14.21 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any provision or part of a provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces. No Arbitrator shall have the authority to, and no Arbitrator shall, make a determination that any provision of this Agreement (or part thereof) is invalid or unenforceable.

14.22 Enurement

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

14.23 No Duplication

For greater certainty, the Province acknowledges that any obligations required to be performed by OPG and the OPG Nuclear Subsidiaries are to be performed without duplication.

14.24 Counterpart Execution

The Parties agree that this Agreement may be executed in one or more counterparts and the execution of at least one counterpart copy of this Agreement by each of the Parties shall constitute full and proper execution of the Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement

SCHEDULE 1

OPG NUCLEAR SUBSIDIARIES

OPG DARLINGTON INC.

OPG DARLINGTON WASTE INC.

OPG PICKERING INC.

OPG PICKERING WASTE INC.

OPG-HURON A INC.

OPG-HURON B INC.

OPG WASTE INC.

OPG-HURON COMMON FACILITIES INC

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SCHEDULE 1.1
DEFINITIONS

In this Agreement capitalized terms have the meanings set out in this Schedule 1.1:

- 1.1 **"1999 Reference Plans"** means the Reference Plans issued by OPG as at January 1, 1999, copies of which have been provided to the Province.
- 1.2 **"Actual Used Fuel Fund Value"** has the meaning attributed thereto in paragraph 3.7.1(a).
- 1.3 **"Adjusted Cost Estimate"** means, at any time, the Approved Cost Estimate minus the January 1, 1999 Present Value of any Incremental Costs calculated on the basis of the then current Approved Reference Plan.
- 1.4 **"Agreement"** means this agreement and all Schedules attached to this Agreement, in each case as they may be amended, restated or supplemented from time to time, and unless otherwise indicated, references to Articles, sections and Schedules are to Articles, sections and Schedules in this Agreement.
- 1.5 **"Annual Budget"** means a calendar year Budget.
- 1.6 **"Answer"** means a written response by the Respondent who is subject to a Dispute Resolution stating in sufficient detail its position with respect to the material facts in the Claim and the material facts on which it intends to rely, and the relief, if any, being sought by it.
- 1.7 **"Applicable Law"** means for any Person, property, agreement, transaction or event, all applicable Canadian federal, provincial or municipal laws, statutes, by-laws, codes, ordinances, decrees, rules, regulations, policies, guidelines and judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, general principles of common law and conditions of any grant of approval, permission, authority or License of any

Canadian federal or provincial court, statutory body, self-regulatory authority or other Governmental Body, including, for greater certainty, the Applicable Regulator.

- 1.8 **"Applicable Regulator"** means the CNSC, any successor thereto appointed under the *Nuclear Safety and Control Act* (Canada), and any other Person with authority under Applicable Law and including, for greater certainty, all such enactments of any regional or municipal government or their respective agencies and boards.
- 1.9 **"Approved Budget"** means, subject to subsection 5.4.2, an Annual Budget, including any revisions thereto, which:
 - (a) implements an Approved Reference Plan except to the extent that the Province, acting reasonably, objects that the amount allocated to a particular item in the Annual Budget is not in accordance with Good Utility Practices; or
 - (b) implements a Reference Plan which OPG reasonably expects will, in substance, be submitted to and approved by the Province or its agent under Article 5, acting reasonably, providing that the Province or its agent under Article 5 has approved the Annual Budget.
- 1.10 **"Approved Cost Estimate"** means the Present Value (as of January 1, 1999) of the estimate of the aggregate of all Used Fuel Eligible Costs (other than (a) all brokerage fees paid in respect of the Used Fuel Segregated Fund, (b) fees paid or payable to the Used Fuel Segregated Fund Managers or Used Fuel Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds, and (c) fees paid or payable to any other Person which are Used Fuel Eligible Costs pursuant to paragraph 3.1.1(f)) calculated on the basis of the then current Approved Reference Plan.

- 1.11 **"Approved Reference Plan"** means a Reference Plan for Nuclear Waste Management and/or Decommissioning of Stations and Other Facilities that has been approved by the Province (or its agent) as provided in Article 5 and thereafter approved, if required, by the Applicable Regulator under Nuclear Legislation. The 1999 Reference Plan shall be deemed for the purposes of this Agreement to be the Approved Reference Plan as at the date of the execution and delivery of this Agreement.
- 1.12 **"Arbitrator"** and **"Arbitrators"** mean the arbitrator or arbitrators (as the case may be) appointed under item 4 of Part II of Schedule 11.2.
- 1.13 **"Auditor"** means the Person appointed as auditor under subsection 9.3.1.
- 1.14 **"Balance to Complete Cost Estimate"** means the Decommissioning Balance to Complete Cost Estimate or the Used Fuel Balance to Complete Cost Estimate, as the case may be.
- 1.15 **"Bruce Extraordinary Payment"** shall have the meaning attributed to it in paragraph 3.4.2(a).
- 1.16 **"Budget"** means, for the period covered by the budget in question, a projection at a level of detail reasonable in the circumstances of Eligible Costs, Incremental Costs, costs other than Eligible Costs and Disbursements.
- 1.17 **"Business Day"** means any day, other than Saturday, Sunday or any other holiday (as such term is used in the Rules of Civil Procedure for the Province of Ontario).
- 1.18 **"CANDU Reactor"** means a pressurized heavy water reactor located at a Station that is commonly known as a CANDU reactor.
- 1.19 **"Cash"** means cash, certified cheque, bank draft or wire transfer.
- 1.20 **"Claim"** means a written statement setting out in detail the material facts on which a Claimant intends to rely and the relief that it claims under a Dispute Resolution.

- 1.21 **"Claimant"** means the Party submitting a claim in respect of a Dispute subject to Dispute Resolution under item 2 of Part I of Schedule 11.2.
- 1.22 **"CNSC"** means the Canadian Nuclear Safety Commission established under the *Nuclear Safety and Control Act* (Canada) and any successor agency, board or commission.
- 1.22.1 **"CNSC Payee"** means the CNSC or any Person designated by the CNSC as entitled to receive Disbursements pursuant to a CNSC Access Agreement.
- 1.23 **"Commitment in Lieu"** means any written commitment executed and delivered by the Province in respect of the Used Fuel Segregated Fund or by OEFC in respect of the Decommissioning Segregated Fund (as the case may be) pursuant to which the Province agrees to make a payment in Cash to the Used Fuel Segregated Fund or OEFC agrees to make a payment in Cash to the Decommissioning Segregated Fund (as the case may be), each in accordance with the terms of the subject Commitment in Lieu and this Agreement.
- 1.24 **"Committee"** means a committee comprised of the President of OPG (or his/her designate) and the Deputy Minister of Finance (or his/her designate).
- 1.25 **"Compliance Certificate"** means a certificate of OPG signed on its behalf by its chief financial officer, chief operating officer or any other senior officer (given by such senior officer on behalf of OPG without personal liability) stating that (a) the representations and warranties contained in this Agreement are true and correct in all material respects on and as of such date (unless they relate solely to a prior time) or if they are not true and correct, how they are not true and correct; (b) neither OPG nor any OPG Nuclear Subsidiary is in material breach of any of the material covenants contained in this Agreement or in any document delivered pursuant to this Agreement as at the date of the certificate in question, or if OPG or any OPG Nuclear Subsidiary is in material breach of any of the material covenants contained in this Agreement or any document delivered pursuant to this Agreement, as of the date of the certificate in question, stating how OPG or any OPG Nuclear Subsidiary is in material breach of such material covenant; and

(c) no Default or Event of Default has occurred and is continuing or if a Default or Event of Default has occurred and is continuing, states the nature of the Default or Event of Default, giving reasonable details in respect thereof.

- 1.26 **"Confidential Information"** means all confidential or proprietary information, intellectual property (including trade secrets), financial or business information, and confidential facts relating to either (a) the business and affairs of OPG or any OPG Nuclear Subsidiary, (b) a Station or Other Facility, (c) Decommissioning, (d) Nuclear Waste Management or (e) the business and affairs of the Province or OEFC.
- 1.27 **"Controlling Interest"** means *de facto* control of the Person, Station or Other Facility in question, provided a body corporate shall for the purposes of this Agreement be deemed to be controlled by another Person, or by two or more Persons, if, but only if, voting securities of the first-mentioned body corporate carrying more than 20% of the votes for the election of directors are held (other than by way of security) by or for the benefit of such other Person or Persons.
- 1.28 **"Cost Estimate"** means at any time the Decommissioning Cost Estimate, the Decommissioning Balance to Complete Cost Estimate, the Used Fuel Cost Estimate or the Used Fuel Balance to Complete Cost Estimate, as the case may be, at that time.
- 1.29 **"Counter-Claim"** means a written submission in which a Respondent in a Dispute Resolution sets out in detail any other Disputes that it wishes the Arbitrator(s) to decide during a Dispute Resolution initiated by a Claimant.
- 1.30 **"CPI (Ontario)"** shall be determined in accordance with this section, for any date, using the consumer price index for the Province of Ontario (time base 1992 = 100), or the price index most nearly corresponding thereto should the said consumer price index not be published for any time during the period in question, as published for that date by Statistics Canada or any successor or other body which may assume responsibility for the preparation and publishing of the said consumer price index or corresponding index, as the case may be. Where the

CPI (Ontario) is being determined for a date which is the first day of a month, the CPI (Ontario) for that date shall be the reference consumer price index value for the third month preceding that date. Where the CPI (Ontario) is being determined for a date which is not the first day of a month, the CPI (Ontario) for that day shall be the linear interpolation between the reference consumer price index value for the third month preceding that date and the reference consumer price index value for the second month preceding that date. This determination is expressed by the following formula:

$$\text{CPI (Ontario)}_{\text{Date}} = \text{Ref CPI}_{M-3} + \frac{t-1}{D} [\text{Ref CPI}_{M-2} - \text{Ref CPI}_{M-3}]$$

where,

Date = the date for which the CPI (Ontario) is being determined;

D = the number of days after the first day of the calendar month in which the Date falls;

t = the calendar day corresponding to the Date;

Ref CPI_{M-3} is the reference consumer price index for the third calendar month preceding the month in which the Date falls;

Ref CPI_{M-2} is the reference CPI (Ontario) for the second calendar month immediately preceding the month in which the Date falls.

For example, the CPI (Ontario) for October 20, 1994, is calculated as follows:

$$\text{CPI}_{\text{October 20, 1994}} = \text{CPI}_{\text{July, 1994}} + \frac{19}{31} [\text{CPI}_{\text{August, 1994}} - \text{CPI}_{\text{July, 1994}}].$$

- 1.30.1 **"CNSC Access Agreement"** means any agreement among OPG, the Province and CNSC providing a CNSC Payee a right to receive Disbursements from the Segregated Funds (or any other fund established under section 3.2 or 4.2) for the purposes of satisfying a financial guarantee requirement imposed by the CNSC

under the *Nuclear Safety and Control Act* (Canada) as a condition to the issuance, renewal or amendment of any Licence issued by the CNSC relating to one or more of the Stations or Other Facilities.

1.30.2 **"CNSC Reconciliation Statement"** has the meaning attributed to it in subsection 7.3.4.

1.30.3 **"CNSC Reconciliation Update Statement"** has the meaning attributed to it in subsection 7.3.4.

1.31 **"Decommissioning"** means to remove a Station or Other Facility from service and to reclaim, restore and rehabilitate the Site of such Station or Other Facility, in accordance with Applicable Law, including (a) Safe-Storage of a Station or Other Facility; (b) the dismantlement, decontamination, long-term storage or entombment of the Station or Other Facility, in whole or in part, and any reduction or removal of Radioactive material and other contaminants at the Station or Other Facility Sites, including Nuclear Waste; and (c) all activities necessary for the retirement, dismantlement and decontamination of the Station or Other Facility and any reclamation, restoration and rehabilitation of the Site in order to comply with all Applicable Law, the Licences for the Station or Other Facility, and the Approved Reference Plan, as determined by the Applicable Regulator under Nuclear Legislation. **"Decommission"** and **"Decommissioned"** have corresponding meanings.

1.32 **"Decommissioning Balance to Complete Cost Estimate"** means at any time, the aggregate Present Value of all Decommissioning Eligible Costs (other than (a) all brokerage fees paid in respect of the Decommissioning Segregated Fund, (b) fees paid or payable to the Decommissioning Segregated Fund Managers or Decommissioning Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds, and (c) fees paid or payable to any other Person which are Decommissioning Eligible Costs pursuant to paragraph 4.1.1(o)) that either (i) have been incurred but remain unpaid at the time in question, or (ii) are estimated to be incurred after that time in accordance with an Approved

Reference Plan, in each case other than those Decommissioning Eligible Costs that are to be paid from a Disbursement from the Decommissioning Segregated Fund prior to the time in question.

1.33 **"Decommissioning Cost Estimate"** means at any time the sum of (a) the aggregate Present Value of each Decommissioning Eligible Cost (other than (i) all brokerage fees paid in respect of the Decommissioning Segregated Fund, (ii) fees paid or payable to the Decommissioning Segregated Fund Managers or Decommissioning Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds, and (iii) fees paid or payable to any other Person which are Decommissioning Eligible Costs pursuant to paragraph 4.1.1(o)) incurred and paid at or prior to that date, but in no event prior to April 1, 1999, and (b) the Decommissioning Balance to Complete Cost Estimate as at that time.

1.34 **"Decommissioning Eligible Costs"** has the meaning attributed to it in subsection 4.1.1.

1.35 **"Decommissioning Excluded Costs"** has the meaning attributed to it in subsection 4.1.2.

1.36 **"Decommissioning Segregated Fund"** means, at any time, the fund or funds to be established pursuant to the terms of this Agreement to be held, subject to Applicable Law, by the Decommissioning Segregated Fund Custodian under the Decommissioning Segregated Fund Custodial Agreement, the property and assets of which are to be used to fund the payment or reimbursement of Decommissioning Eligible Costs.

1.37 **"Decommissioning Segregated Fund Custodial Agreement"** means any agreement to which the Province (or its agent), OPG and a Decommissioning Segregated Fund Custodian are parties providing for the custody and safekeeping of all or part of the property and assets of the Decommissioning Segregated Fund.

- 1.38 **"Decommissioning Segregated Fund Custodian"** means the custodian and/or trustee of the Decommissioning Segregated Fund from time to time under any then outstanding Decommissioning Segregated Fund Custodial Agreement.
- 1.39 **"Decommissioning Segregated Fund Management Agreement"** means any agreement(s) to which the Province (or its agent), OPG and a Decommissioning Segregated Fund Manager are parties fixing investment policies for the Decommissioning Segregated Fund and providing for the investment management (or supervision of the investment management) of all or part of the property and assets of the Decommissioning Segregated Fund.
- 1.40 **"Decommissioning Segregated Fund Manager"** means a manager of the Decommissioning Segregated Fund from time to time under any then outstanding Decommissioning Segregated Fund Management Agreement.
- 1.41 **"Decommissioning Segregated Fund Matching Payment"** means a Provincial Payment to the Used Fuel Segregated Fund made by the Province under subsection 4.7.3 in an amount equal to that sum Disbursed to the Province from the Decommissioning Segregated Fund pursuant to subsection 4.7.3 immediately prior to, or contemporaneously with, the said Provincial Payment to the Used Fuel Segregated Fund.
- 1.42 **"Decommissioning Segregated Fund Rate of Return"** means for any period the rate of return on investments in the Decommissioning Segregated Fund other than any Commitment in Lieu, during that period, net of (a) all brokerage fees paid in respect of the Decommissioning Segregated Fund, (b) fees paid or payable to the Decommissioning Segregated Fund Managers or Decommissioning Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds and (c) fees paid or payable to any other Person which are Decommissioning Eligible Costs pursuant to paragraph 4.1.1(o), expressed as an annual percentage which was compounded annually.

- 1.43 **"Default"** means an event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.
- 1.44 **"Default Notice"** means a written notice delivered by the Province to OPG exercising its rights under Article 13.
- 1.45 **"Disbursement"** means a disbursement, payment or withdrawal pursuant to and in accordance with the terms of this Agreement or as provided for in any Segregated Fund Custodial Agreement or any Segregated Fund Management Agreement from the Used Fuel Segregated Fund or the Decommissioning Segregated Fund, as the case may be. **"Disburse"** and **"Disbursed"** have corresponding meanings.
- 1.46 **"Disbursement Reconciliation"** means a written statement in respect of such period specified by the Province for Disbursements from the Segregated Fund in question as the Province may from time to time request in writing or as otherwise provided by OPG pursuant to the provisions of subsection 9.3.3. The Disbursement Reconciliation shall contain a report for the Segregated Fund in question in form and content acceptable to the Province, acting reasonably, allocating Disbursements as being on account of Used Fuel Eligible Costs, Decommissioning Eligible Costs, Incremental Costs, or Other Fund Costs, and comparing the amounts in question against the corresponding expenses set out in the applicable Approved Budget and statement of intended expenses accompanying the Disbursement requests during the period in question.
- 1.47 **"Discount Rate"** means an annual rate, compounded annually, equal to: (a) for the purposes of calculations regarding the Used Fuel Segregated Fund or any Commitment in Lieu, (i) in respect of a future amount, 3.25% plus the forecasted long-term average Inflation Rate, and (ii) in respect of any amount that has already been incurred, 3.25% plus the Inflation Rate for the period since the date the amount was incurred; and (b) for the purposes of calculations regarding the Decommissioning Segregated Fund, (i) in respect of a future amount, the forecasted real rate of return used in the then current Approved Reference Plan plus the forecasted long-term average Inflation Rate, and (ii) in respect of any

amount that has already been incurred, the real rate of return set out in each Approved Reference Plan plus the Inflation Rate during the term thereof. As at the effective date of this Agreement, the forecasted long-term average Inflation Rate is 2.5% and the forecasted real rate of return for the purposes of calculations regarding the Decommissioning Segregated Fund is 3.25%.

- 1.48 **“Dispute”** means any dispute arising under this Agreement other than a Financial Issue.
- 1.49 **“Dispute Resolution” or “Dispute Resolution Procedure”** means the Dispute resolution procedure set out in Part II of Schedule 11.2.
- 1.50 **“Disputed Disbursement”** means a Disbursement which the Province believes is not being made in accordance with the terms and conditions of this Agreement, as described in a Disputed Disbursement Notice.
- 1.51 **“Disputed Disbursement Notice”** means a notice in writing addressed by the Province to each of OPG and the Segregated Fund Custodian of a Disputed Disbursement.
- 1.52 **“DSF Collateral”** means, collectively:
- (a) the Decommissioning Segregated Fund;
 - (b) any fund described in subsection 4.2.1, provided only that some or all of the Decommissioning Eligible Costs are intended to be paid or reimbursed from such fund; and
 - (c) for each of the funds described in paragraphs (a) and (b) above, all the property and assets forming part thereof, including any proceeds derived from each such fund and its investments from time to time.

but only in each case to the extent OPG or any OPG Nuclear Subsidiary has an interest therein, including:

- (i) all of OPG's rights under the subject fund custodial agreement;
- (ii) all Payments from time to time once made by OPG or by any other Person to the subject fund and the proceeds therefrom;
- (iii) the subject fund and any Cash, credit balances or deposit accounts maintained pursuant to the provisions of the subject fund custodial agreement, the credit balances thereof and all amounts from time to time on deposit therein;
- (iv) any Yield at any time received and held by the subject fund custodian;
- (v) all instruments, securities and other investments in which all or part of the Cash or credit balances referred to in paragraph (iii) above have been invested and all instruments, securities and other investments held in substitution for any such instruments, securities and other investments previously held or resulting from the renewal or extension of or the investment, re-investment or management of any Cash, investments, Yield proceeds or other funds held by the subject fund custodian pursuant to the subject fund custodial agreement;
- (vi) all proceeds obtained upon the maturity or payment of or sale, disposition or realization of any security, instrument or investment held by the subject fund custodian pursuant to the subject fund custodial agreement;

- (vii) all security or certificates for, or evidencing any of, the foregoing; and
- (viii) the right to enforce or sue for the performance of any of the foregoing and the full benefit of all rights attaching thereto.

1.53 **"DSF Security"** means the security interest by way of grant, assignment, mortgage and charge in the DSF Collateral.

1.54 **"Eligible Cost"** means any Decommissioning Eligible Cost or any Used Fuel Eligible Cost, as the context requires.

1.55 **"Event of Default"** means any of the following:

- (a) OPG or any OPG Nuclear Subsidiary fails to make a Payment to either of the Segregated Funds or any other fund established under the terms of this Agreement when such amount becomes due and payable or within three (3) Business Days thereof;
- (b) OPG or any OPG Nuclear Subsidiary fails to pay or reimburse any indemnified sum under any of subsection 7.3.4, 7.4.3 or section 13.4, any reimbursement under subsection 9.3.4, or any other financial obligation under the terms of this Agreement including the Provincial Guarantee fee contemplated by section 7.2 when the same becomes due and payable hereunder and, in any case, such failure remains unremedied for a period of three (3) Business Days following written notice thereof to OPG;
- (c) any representation or warranty or certification made by OPG or by any OPG Nuclear Subsidiary or any director or officer of any of them in or pursuant to this Agreement is incorrect when made; unless the circumstances giving rise to such incorrect representation, warranty or certificate (i) would not have in the judgement of the Province (reasonably exercised) a material adverse effect on the rights, powers,

benefits and obligations conferred on the Province by this Agreement or (ii) are capable of modification or rectification (such that, thereafter such representation or warranty would be correct) and such representation or warranty is corrected during a period of 30 days following written notice thereof to OPG;

- (d) OPG or any OPG Nuclear Subsidiary obligated thereby fail to perform, observe or comply with the covenants contained in any of subsections 3.10.1 and 4.7.1 and sections 12.1 and 12.4 unless such failure (i) would not have in the judgement of the Province (reasonably exercised) a material adverse effect on the rights, powers, benefits and obligations conferred on the Province by this Agreement or (ii) is capable of being remedied and is remedied during the 10 days following written notice thereof to OPG;
- (e) OPG or any OPG Nuclear Subsidiary obligated thereby fail to perform, observe or comply with the covenants contained in any of sections 2.3, 2.4, 3.10.3, 9.3.3, 5.1, 5.2, 5.3, 5.4, 8.2, 9.1, 12.2, 14.2 and 14.5 unless such failure (i) would not have in the judgement of the Province (reasonably exercised) a material adverse effect on the rights, powers, benefits and obligations conferred on the Province by this Agreement or (ii) is capable of being remedied and is remedied during the 10 days following written notice thereof to OPG;
- (f) OPG or any OPG Nuclear Subsidiary obligated thereby fail to perform, observe or comply with any other term, covenant or agreement contained in this Agreement on its part to be performed, observed or complied with unless such failure (i) would not have in the judgement of the Province (reasonably exercised) a material adverse effect on the rights, powers, benefits and obligations conferred on the Province by this Agreement or (ii) is capable of being remedied and is remedied during the 30 days following written notice thereof to OPG; or

- (g) OPG or any OPG Nuclear Subsidiary (i) becomes insolvent or generally fails to pay its debts as such debts become due; (ii) admits in writing its inability to pay its debts generally as such debts become due, or makes a general assignment for the benefit of creditors; (iii) institutes or has instituted against it any proceeding seeking (A) to adjudicate it a bankrupt or insolvent, (B) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency or reorganization or relief of debtors, (C) the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property or assets, and in the case of any such proceeding instituted against it (but not instituted by it), any such proceeding shall remain undismissed or unstayed for a period of 45 days, or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, receiver and manager, monitor, trustee, custodian or other similar official for it or for any substantial part of its property and assets) shall occur; or (D) takes any corporate action to authorize any of the foregoing actions.

- 1.56 **"Excess"** has the meaning attributed to it in section 8.2.
- 1.57 **"Excess Used Fuel"** means Used Fuel Bundles in excess of the Used Fuel Bundle Threshold.
- 1.58 **"Fair Market Value"** of an asset of a Segregated Fund at any time means the fair market value determined by the Segregated Fund Manager(s).
- 1.59 **"Financial Guarantee"** means one or more written financial commitments or assurances with respect to the Management of Nuclear Waste and/or Decommissioning of Stations and Other Facilities in favour of the CNSC as the CNSC may from time to time require under the *Nuclear Safety and Control Act* (Canada) as a condition to the issuance, renewal or amendment of any Licence

issued by the CNSC relating to one or more of the Stations or Other Facilities, which may include a CNSC Access Agreement or a Provincial Guarantee.

- 1.60 **"Financial Issue"** means any dispute or failure to agree on a financial calculation, an estimate or a valuation or the amount of any payment, or Disbursement, including: (a) the Present Value of any amount, (b) the Fund Value, (c) the determination of the amount of Payments and Provincial Payments, (d) the determination of the amount of any Commitment in Lieu and any payments in Cash due thereunder, (e) the Fair Market Value of a Segregated Fund or an asset of a Segregated Fund, (f) any required adjustment to the Cost Estimates, (g) any calculation or other estimate required under the provisions of either Article 3 and Article 4, (h) any Disbursement Reconciliation, and (i) the amount of any excess or surplus under any of section 3.7, subsections 3.10.3 or 4.7.3 or section 8.2.
- 1.61 **"Financial Professional"** means an independent financial professional (being an accountant, actuary or other professional with expertise in the relevant area) who is a member of a nationally recognized firm and selected by the Province from a list of candidates agreed to in writing from time to time by OPG and the Province to adjudicate a Financial Issue.
- 1.62 **"Fiscal Quarter"** means each 3-month quarter of a Fiscal Year, which as of the date of this Agreement, shall be a calendar quarter.
- 1.63 **"Fiscal Year"** means the fiscal year of OPG, which as of the date of this Agreement, is the calendar year ending on December 31 in each year.
- 1.64 **"Fixed Used Fuel Fund Value"** has the meaning attributed thereto in paragraph 3.7.1(a).
- 1.65 **"Fund Value"** means, at any time, the Fair Market Value of the Decommissioning Segregated Fund assets at the time in question.

- 1.66 **"GAAP"** means generally accepted accounting principles approved from time to time by the Canadian Institute of Chartered Accountants or any successor institute, applied on a consistent basis.
- 1.67 **"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 Management of Nuclear Waste and Decommissioning of nuclear facilities, taking into account any differences in design, size and capacity of the Stations or Other Facilities or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent nuclear operator or used fuel waste facility operator, as the case may be, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Law. Good Utility Practices are not intended to be limited to the optimal practices, methods or acts to the exclusion of all others, but rather to be practices, methods or acts generally accepted in the North American electric utility industry.
- 1.68 **"Governmental Body"** means any Canadian federal or provincial, parliament or legislature, or any regulatory authority, agency, commission, tribunal board or department of any Canadian government, parliament or legislature, or any Canadian federal or provincial court, or any Canadian law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, or any Person acting under the authority of any Governmental Body, including any regional or municipal governmental bodies.
- 1.69 **"Incremental Costs"** means (a) any costs payable out of any fund required to be established by OPG under any Nuclear Legislation that would not otherwise qualify as Used Fuel Eligible Costs under subsections 3.1.1(a) to (f) plus (b) all tax payments expected to be Disbursed out of the Used Fuel Segregated Fund if and to the extent that at any time either OPG or the Province, acting reasonably, makes a determination that the Used Fuel Segregated Fund is subject to tax of

any nature whatsoever, plus (c) costs described in section 3.1.1 but which would not have been incurred but for the creation of Excess Used Fuel and shall include but not be limited to:

- (i) all incremental costs incurred to expand an existing Used Fuel Repository or to design and construct one or more additional Used Fuel Repositories to store Excess Used Fuel;
- (ii) any incremental costs in obtaining amendment(s) to any Used Fuel Repository Licence to permit storage of Excess Used Fuel or to License an additional Repository for the storage of Excess Used Fuel;
- (iii) any incremental costs for containers for storage and disposal of Excess Used Fuel;
- (iv) any incremental transportation costs (including additional transportation containers and casks and vehicles) for Excess Used Fuel;
- (v) any incremental increase in Repository operating costs arising directly as a result of Excess Used Fuel;
- (vi) any incremental Repository closure, Decommissioning and monitoring costs arising directly as a result of Excess Used Fuel;
- (vii) any other incremental costs of Used Fuel storage, management, transportation and disposal arising directly as a result of Excess Used Fuel; and
- (viii) any incremental fees, commissions and expenses of the nature referred to in paragraph 3.1.1(f) incurred in respect of any assets of

any fund out of which any of the foregoing Incremental Costs are paid.

- 1.70 **"Indemnified Parties"** means each of the Province, OEFC and their respective officers, directors, employees and advisors.
- 1.71 **"Inflation Rate"** for any period means the rate of change in CPI (Ontario) from the first day to the last day of that period and is expressed as an annual percentage rate. For example, if CPI (Ontario) (as determined in accordance with subsection 1.30) on the first day of the period were 105 and on the last day of the period were 107, and the period were one year, the Inflation Rate for that period would equal 1.90% $(107-105/105 \times 100)$.
- 1.72 **"Licences"** means all licences, permits, certificates, franchises, registrations, rights, privileges and other governmental authorizations, consents and approvals required by Applicable Law for Stations or Other Facilities.
- 1.73 **"Low and Intermediate Level Waste"** means Radioactive material (other than Used Fuel and Radioactive material resulting from chemical separation of Used Fuel into its constituent elements by reprocessing) derived from a Station or Other Facility or any Radioactive material as may be classified as "low level waste" or "intermediate level waste" by the CNSC.
- 1.74 **"Low and Intermediate Level Waste Facility"** means any facility or portion thereof approved by the Applicable Regulator under Nuclear Legislation:
- (a) for deep geological disposal of some or all Low and Intermediate Level Waste, regardless of the location of the facility, or
 - (b) for the storage or disposal of some or all Low and Intermediate Level Waste where the facility is not at or adjacent to a Station Site.
- 1.75 **"Management"** means, with respect to Nuclear Waste, the removal, transportation, processing, storage or disposal of Nuclear Waste or any other

approach to addressing Nuclear Waste that is approved by an Applicable Regulator. "Manage" and "Managing" have corresponding meanings.

- 1.76 **"Minister of Finance"** means the Minister of Finance in right of Ontario.
- 1.77 **"NFWA Fund"** means the fund to be established by OPG under the *Nuclear Fuel Waste Act* (Canada), if and when enacted, and if such Act imposes an obligation on OPG to establish and maintain such fund.
- 1.77.1 **"No-Fault Indemnity Payment"** means any amount paid or payable by either the Province or the Ontario Financing Authority or OPG pursuant to the indemnification provisions of (i) any Segregated Fund Custodial Agreement, (ii) any Segregated Fund Management Agreement, or (iii) any other written agreement approved by the Province (or its agent) and OPG with Persons dealing at arm's length with OPG and each of the OPG Nuclear Subsidiaries for services relating to the custody and management of the Segregated Funds where the indemnification obligation does not arise out of (a) a direction from the Province or the Ontario Financing Authority or OPG or any other action or omission by the Province or the Ontario Financing Authority or OPG, or (b) a breach of the applicable agreement by the Province or the Ontario Financing Authority or OPG.
- 1.78 **"Nuclear Incident"** has the meaning attributed thereto in the *Nuclear Liability Act* (Canada).
- 1.79 **"Nuclear Legislation"** means (a) the *Nuclear Safety and Control Act* (Canada), (b) the *Nuclear Fuel Waste Act* (Canada), if and when enacted, (c) all other federal and/or provincial laws and statutes governing the Management of Nuclear Waste and/or the decontamination, restoration and/or Decommissioning of Stations and/or Other Facilities and/or related Sites, (d) all regulations, rules, decrees, policies, codes, guidelines, orders, decisions, directives, rulings or awards under (a), (b) and (c), and (e) any conditions of any grant of approval, permission, certification, consent, registration, authority or Licence under (a), (b),

(c) or (d), but excluding, for greater certainty, all such regional or municipal enactments.

- 1.80 **"Nuclear Waste"** means, collectively, Low and Intermediate Level Waste and Used Fuel.
- 1.81 **"Operating Period End Date"** for each Station, means the date when the last CANDU Reactor at that Station is expected to be Permanently Shutdown based on the current Approved Reference Plan.
- 1.82 **"OEFC"** means Ontario Electricity Financial Corporation.
- 1.83 Intentionally deleted.
- 1.84 **"OEFC Payment"** means any payment which OEFC is required to make (or has made) to the Decommissioning Segregated Fund in the aggregate amount set out in subsection 4.4.1, which payment may be made in the manner provided for in subsection 4.4.2;
- 1.85 **"OPG"** means Ontario Power Generation Inc.
- 1.86 **"OPG Nuclear Subsidiaries"** means, those corporations listed in Schedule 1, and, at any time following the execution and delivery of this Agreement, each subsidiary of OPG which at that time owns, leases or otherwise has an interest, directly or indirectly, in a Station or Other Facility or which has any responsibility under Applicable Law for Decommissioning a Station or Other Facility or for Management of Nuclear Waste produced at a Station or produced at an Other Facility directly or indirectly as a result of the Management of Nuclear Waste which was produced at a Station, or which undertakes any such Decommissioning or Nuclear Waste Management.

1.87 **"Other Facility"** means and shall be strictly limited to, at any time:

- (a) a Waste Management Facility,
- (b) a Low and Intermediate Level Waste Facility,
- (c) a Repository,
- (d) the tritium removal facility located at the Site of the Darlington Station, and
- (e) any facility owned and/or operated or to be owned and/or operated by OPG or any OPG Nuclear Subsidiary or any other Person in connection with (i) one or more Stations, or (ii) Nuclear Waste Management, but shall in no circumstances include (A) a Station or (B) any facility which exists on the date of this Agreement and which would otherwise meet the criteria for an **"Other Facility"**, but the costs of which have not been included in the 1999 Reference Plan.

- 1.88 **"Other Fund Costs"** means (a) costs relating to Decommissioning imposed on OPG or on any OPG Nuclear Subsidiaries by Nuclear Legislation which would not, but for such Nuclear Legislation, have qualified as Decommissioning Eligible Costs, plus (b) all tax payments expected to be Disbursed out of the Decommissioning Segregated Fund if and to the extent that at any time either OPG or the Province, acting reasonably, makes a determination that the Decommissioning Segregated Fund is subject to tax of any nature whatsoever.
- 1.89 **"Party"** means, at any time, any Person who is a party to this Agreement at the time in question.
- 1.90 **"Payee"** means a Person or its agent not prohibited by Applicable Law to receive a payment out of a Segregated Fund, including, where so authorized, OPG, any OPG Nuclear Subsidiary, the WMO, the Province or CNSC.

- 1.91 **"Payment"** means any quarterly or other payment which OPG or any OPG Nuclear Subsidiary is required to make, or has made, to a Segregated Fund by the terms of this Agreement or by an Applicable Regulator under Nuclear Legislation.
- 1.92 **"Permanent Shutdown"** means (a) for a CANDU Reactor, the date on which the operator of the CANDU Reactor in question has obtained all necessary Licences from the Applicable Regulators under Nuclear Legislation to discontinue the operation of the CANDU Reactor in question and to Decommission it (or place it in Safe-Storage) in accordance with Applicable Law; (b) for a Station, the date on which the last CANDU Reactor at the Station is Permanently Shutdown and the operator has obtained all necessary Licences from the Applicable Regulators under Nuclear Legislation to Decommission the Site (or place it in Safe-Storage); and (c) in respect of any Other Facility, means the operator of the Other Facility has obtained all necessary Licences from the Applicable Regulators under Nuclear Legislation to Decommission the Site (or place it in Safe-Storage). **"Permanently Shutdown"** has a corresponding meaning.
- 1.93 **"Permitted Encumbrance"** means, with respect to any Person, liens or similar encumbrances arising by operation of law in the ordinary course of business of the Person including: (a) liens incurred and pledges and deposits made in connection with workplace safety insurance, employment insurance, old age pensions and similar legislation and mechanics', workers', repairers' or other similar possessory liens arising in the ordinary course of business; (b) liens of any judgment creditors rendered or claims filed against the Person which the Person is contesting in good faith by proper legal proceedings; (c) inchoate liens and charges incidental to current operations of the Person which have not been filed or perfected pursuant to law against the Person or which relate to obligations which are not yet due and payable; (d) statutory liens of landlords, including rights of distress; and (e) security given in the ordinary course of business by the Person to a public utility or any municipal, regional or Governmental Body in connection with the current operations of the Person.

- 1.94 **"Person"** means (where the context so permits) any individual, partnership, limited partnership, corporation or company, with or without share capital, firm, association, syndicate, trust, trustee, executor, administrator or other legal personal representative, joint venture, sole proprietorship, limited liability company, foundation, unincorporated organization, regional or municipal government, or a Governmental Body (or any department, agency, or political subdivision thereof, or representative of such Governmental Body).
- 1.95 **"Present Value"** of a future or past cost or payment at any time means the value of the cost or payment taking into account the time-value of money, calculated using the Discount Rate during the period between that time and the date the cost was or is to be incurred or the payment was or is to be made, as the case may be. Present Value of a Commitment in Lieu at any time means the amount payable under the Commitment in Lieu if it were paid in Cash at that time, including for greater certainty any interest payable under the Commitment in Lieu as at that time.
- 1.96 **"Present Value Threshold Percentage"** means, at the time at which the calculation is done:
- (a) the Present Value of the assets of the Used Fuel Segregated Fund (calculated based on the assumption that the Used Fuel Segregated Fund has earned the Discount Rate regardless of its actual earnings), including the Present Value of any Used Fuel Segregated Fund Commitment in Lieu,
- expressed as a percentage of
- (b) the then current Used Fuel Balance to Complete Cost Estimate.
- 1.97 **"Prime Rate of Interest"** means the variable per annum reference rate of interest (as announced and adjusted by OPG's Canadian banker from time to time) for Canadian dollar loans from such bank in Canada and designated by such bank as its "prime rate", it being understood that such rates may not be

such bank's best or lowest rates. If OPG has more than one Canadian banker, then for the purposes of this definition the bank shall be the Canadian bank among the banks used by OPG with the highest asset value as at December 31 in the immediately preceding calendar year.

- 1.98 **"Province"** means Her Majesty the Queen in right of Ontario as represented by the Minister of Finance.
- 1.98.1 **"Provincial Guarantee"** means a written financial commitment or assurance with respect to the Management of Nuclear Waste and/or Decommissioning of Stations and Other Facilities executed and delivered by the Province in favour of the CNSC or such Person designated by the CNSC in a form acceptable to the Province and the CNSC in those circumstances where such financial commitment or assurance is required by the CNSC under the *Nuclear Safety and Control Act* (Canada) as a condition to the issuance, renewal or amendment of any Licence issued by the CNSC relating to one or more of the Stations or Other Facilities.
- 1.99 **"Provincial Payment"** means any payment which the Province is required to make, or has made, to a Segregated Fund under the terms of this Agreement, which payment may be made in the manner provided for in subsection 3.9.2.
- 1.100 **"Radioactive"** means a material containing nuclides emitting alpha, beta or gamma radiation, in concentrations or quantities that exceed CNSC regulations or other Nuclear Legislation for unrestricted release into the environment.
- 1.101 **"Receiver"** means a receiver or a receiver and manager appointed by the Province pursuant to either paragraphs 3.11.6(a) or 4.8.6(a) or by order of a court of competent jurisdiction.
- 1.102 **"Reference Plan"** means a reference plan at a level of detail reasonable in the circumstances for financial planning purposes, including Cost Estimates, compiled in accordance with this Agreement and Applicable Law, for Nuclear Waste Management and/or Decommissioning of Stations and Other Facilities.

- 1.102.1 **"Refundable Amount"** has the meaning attributed to it in subsection 7.3.3.
- 1.103 **"Remaining Operating Period"** means, subject to subparagraph 3.6.2(b)(ii), subsections 3.6.3 and 4.6.3, the period from that date to the Operating Period End Date.
- 1.104 **"Reply"** means a written submission setting forth a detailed reply, if any, to a Response under a Dispute Resolution.
- 1.105 **"Repository"** means a structure or location, including any central maintenance or other facility approved by the Applicable Regulator under Nuclear Legislation for the storage or disposal of Used Fuel and the storage or disposal of any co-located Low and Intermediate Level Waste, other than a wet bay or dry storage facility located at or adjacent to a Station Site.
- 1.106 **"Respondent"** means the Party receiving notice of a claim in respect of a Dispute subject to Dispute Resolution under item 4(a) of Part II of Schedule 11.2.
- 1.107 **"Safe-Storage"** means a period of time commencing at Permanent Shutdown of a CANDU Reactor, Station or Other Facility and ending on the commencement of dismantling or entombment of such CANDU Reactor, Station or Other Facility, during which time such CANDU Reactor, Station or Other Facility, including Nuclear Waste stored therein, must be safely and securely maintained pursuant to Applicable Law.
- 1.108 **"Segregated Fund"** means either the Used Fuel Segregated Fund, the Decommissioning Segregated Fund or any other fund deemed to be the part of either of the foregoing as the context requires.
- 1.109 **"Segregated Fund Custodial Agreements"** means the Used Fuel Segregated Fund Custodial Agreement and the Decommissioning Segregated Fund Custodial Agreement, as the case may be.
- 1.110 **"Segregated Fund Custodian"** means a custodian of either of the Segregated Funds appointed from time to time pursuant to a Used Fuel Segregated Fund

Custodial Agreement or a Decommissioning Segregated Fund Custodial Agreement.

- 1.111 **"Segregated Fund Management Agreements"** means the Used Fuel Segregated Fund Management Agreement(s) and the Decommissioning Segregated Fund Management Agreement(s).
- 1.112 **"Segregated Fund Manager"** means a manager of all or any part of either of the Segregated Funds appointed from time to time pursuant to either a Used Fuel Segregated Fund Management Agreement or a Decommissioning Segregated Fund Management Agreement.
- 1.113 **"Site"** means the real property forming a part, or used or usable in connection with the operation, of a Station or Other Facility, including any real property used for the disposal of solid or hazardous waste that is included in the real property comprising a Station or Other Facility. Any reference to a Site shall include the surface and subsurface elements including the soil and groundwater present at the Site, and any reference to materials or conditions "at the Site", including hazardous substances and environmental conditions, shall include all materials and conditions "at, on, in, upon, over, across, under or within" the Site.
- 1.114 **"Special Payment"** has the meaning attributed to it in paragraph 4.7.3(c).
- 1.115 **"Station"** means, at any time, any of the Bruce A, Bruce B, Pickering A, Pickering B and Darlington nuclear generating stations.
- 1.116 **"Station Amount"** has the meaning attributed to it in paragraphs 3.6.2(a) and 4.6.2(a), as applicable.
- 1.117 **"Surplus"** means, at any time, the amount by which the Fund Value (excluding for this purpose assets of the Decommissioning Segregated Fund then allocated to Tax Costs) exceeds 120% of the Decommissioning Balance to Complete Cost Estimate (excluding for this purpose the amount of the Decommissioning Balance to Complete Cost Estimate then allocated to Tax Costs).

- 1.118 **"Tax Costs"** means those costs described in paragraph (b) of section 1.88 of Schedule 1.1.
- 1.119 **"Tax Payment"** has the meaning attributed to it in paragraph 4.7.3(c).
- 1.120 **"Tax Surplus"** means, at any time, the amount by which the Fair Market Value of the assets of the Decommissioning Segregated Fund then allocated to Tax Costs exceeds the portion of the Decommissioning Balance to Complete Cost Estimate then allocated to Tax Costs at that time.
- 1.121 **"Transfer"** includes any sale, assignment or disposition by which legal title or beneficial ownership passes from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value, including any Transfer in connection with the formation of a joint venture or a partnership or the entering into of a management, co-ownership, lease, licence or other agreement, and any agreement to effect any Transfer. The words "Transferred", "Transferring", "Transferee" and similar words have corresponding meanings.
- 1.122 **"Triggering Event"** has the meaning attributed to it in subsection 3.6.1 or subsection 4.6.1, as applicable.
- 1.123 **"UFSF Collateral"** means, collectively:
- (a) the Used Fuel Segregated Fund;
 - (b) any fund described in subsection 3.2.1, provided only that some or all of the Used Fuel Eligible Costs are intended to be paid or reimbursed from such fund; and
 - (c) for each of the funds described in paragraphs (a) and (b) above, all the property and assets forming part thereof, including any proceeds derived from each such fund and its investments from time to time,

but only in each case to the extent OPG or any OPG Nuclear Subsidiary has an interest therein, including:

- (i) all of OPG's rights under the subject fund custodial agreement;
- (ii) all Payments from time to time once made by OPG or by any other Person to the subject fund and the proceeds therefrom;
- (iii) the subject fund and any Cash, credit balances or deposit accounts maintained pursuant to the provisions of the subject fund custodial agreement, the credit balances thereof and all amounts from time to time on deposit therein;
- (iv) any Yield at any time received and held by the subject fund custodian;
- (v) all instruments, securities and other investments in which all or part of Cash or credit balances referred to in paragraph (iii) above have been invested and all instruments, securities and other investments held in substitution for any such instruments, securities and other investments previously held or resulting from the renewal or extension of or the investment, re-investment or management of any Cash, investments, Yield proceeds or other funds held by the subject fund custodian pursuant to the subject fund custodial agreement;
- (vi) all proceeds obtained upon the maturity or payment of or sale, disposition or realization of any security, instrument or investment held by the subject fund custodian pursuant to the subject fund custodial agreement;
- (vii) all security or certificates for, or evidencing any of, the foregoing; and
- (viii) the right to enforce or sue for the performance of any of the foregoing and the full benefit of all rights attaching thereto.

1.124 **"UFSF Security"** means the security interest by way of grant, assignment, mortgage, and charge in the UFSF Collateral.

1.125 **"Under-Funded"** means at the time in question that the Fair Market Value of the assets of the Segregated Fund in question (excluding for the purposes of the Decommissioning Segregated Fund, the assets of the Decommissioning Segregated Fund then allocated to Tax Costs) is less than the Present Value at the time in question of the Segregated Fund's Balance to Complete Cost Estimate (excluding for the purposes of the Decommissioning Segregated Fund, the portion of the Decommissioning Balance to Complete Cost Estimate then allocated to Tax Costs).

1.126 **"Used Fuel"** or **"Used Fuel Bundle"** means natural uranium fuel and the other component parts of nuclear fuel bundles (a) that are withdrawn from a CANDU Reactor at a Station (following irradiation and generating power through nuclear fission) and discharged, and (b) which are not chemically separated into its constituent elements by reprocessing.

1.127 **"Used Fuel Balance to Complete Cost Estimate"** means at any time, the aggregate Present Value of all Used Fuel Eligible Costs (other than (a) all brokerage fees paid in respect of the Used Fuel Segregated Fund, (b) fees paid or payable to the Used Fuel Segregated Fund Managers or Used Fuel Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds, and (c) fees paid or payable to any other Person which are Used Fuel Eligible Costs pursuant to paragraph 3.1.1(f)) that either (i) have been incurred but remain unpaid at the time in question, or (ii) are estimated to be incurred after that time in accordance with an Approved Reference Plan, in each case other than those Used Fuel Eligible Costs that are to be paid from a Disbursement from the Used Fuel Segregated Fund prior to the time in question.

1.128 **"Used Fuel Bundle Threshold"** means the first 2,230,000 Used Fuel Bundles.

- 1.129 **"Used Fuel Cost Estimate"** means at any time the sum of (a) the aggregate Present Value of each Used Fuel Eligible Cost (other than (i) all brokerage fees paid in respect of the Used Fuel Segregated Fund, (ii) fees paid or payable to the Used Fuel Segregated Fund Managers or Used Fuel Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds, and (iii) fees paid or payable to any other Person which are Used Fuel Eligible Costs pursuant to paragraph 3.1.1(f)) incurred and paid at or prior to that date, but in no event prior to April 1, 1999, and (b) the Used Fuel Balance to Complete Cost Estimate as at that time.
- 1.130 **"Used Fuel Eligible Costs"** has the meaning attributed to it in section 3.1.1.
- 1.131 **"Used Fuel Excluded Costs"** has the meaning attributed to it in section 3.1.2.
- 1.132 **"Used Fuel Segregated Fund"** means, at any time, the fund or funds to be established pursuant to the terms of this Agreement to be held, subject to Applicable Law, by the Used Fuel Segregated Fund Custodian under the Used Fuel Segregated Fund Custodial Agreement, the property and assets of which are to be used to fund the payment or reimbursement of Used Fuel Eligible Costs.
- 1.133 **"Used Fuel Segregated Fund Custodial Agreement"** means the agreement to which the Province (or its agent), OPG and a Used Fuel Segregated Fund Custodian are parties providing for the custody and safekeeping of all or part of the property and assets of the Used Fuel Segregated Fund.
- 1.134 **"Used Fuel Segregated Fund Custodian"** means the custodian and/or trustee of the Used Fuel Segregated Fund from time to time under any then outstanding Used Fuel Segregated Fund Custodial Agreement.
- 1.135 **"Used Fuel Segregated Fund Management Agreement"** means any agreement(s) to which the Province (or its agent), OPG and a Used Fuel Segregated Fund Manager are parties fixing investment policies for the Used

- Fuel Segregated Fund and providing for the investment management (or supervision of the investment management) of all or part of the property and assets of the Used Fuel Segregated Fund.
- 1.136 **"Used Fuel Segregated Fund Manager"** means a manager of the Used Fuel Segregated Fund from time to time under any then outstanding Used Fuel Segregated Fund Management Agreement.
- 1.137 **"Used Fuel Segregated Fund Rate of Return"** means for any period the rate of return on investments in the Used Fuel Segregated Fund, other than any Commitment in Lieu, during that period, net of (a) all brokerage fees paid in respect of the Used Fuel Segregated Fund, (b) fees paid or payable to the Used Fuel Segregated Fund Managers or Used Fuel Segregated Fund Custodian, provided they are, where relating to a service shared among the Segregated Funds, reasonably allocated among the Segregated Funds and (c) fees paid or payable to any other Person which are Used Fuel Eligible Costs pursuant to paragraph 3.1.1(f), expressed as an annual percentage, which was compounded annually.
- 1.138 **"Valuation Date"** has the meaning attributed to it in paragraph 3.7.1(a).
- 1.139 **"Waste Management Facility"** means a facility or portion thereof at or adjacent to a Station Site approved by the Applicable Regulator under Nuclear Legislation for the processing, storage and/or disposal of Nuclear Waste, but does not include any facility or portion thereof for deep geological disposal of Low and Intermediate Level Waste.
- 1.140 **"WMO"** means the waste management organization designated under the *Nuclear Fuel Waste Act* (Canada), if and when enacted, for the Management of Used Fuel under the said Act.
- 1.141 **"Yield"** means, in the context of the Used Fuel Segregated Fund or the Decommissioning Segregated Fund, as the case may be, (a) any interest income received in respect of any Cash, UFSF Collateral or DSF Collateral accounts or

on any investment made pursuant to the provisions of this Agreement or the subject Segregated Fund Custodial Agreement, (b) the proceeds received upon maturity or upon payment or redemption of an investment made pursuant to the provisions of the subject Segregated Fund Custodial Agreement in excess of the price paid for such investment, (c) the proceeds received on the sale, disposition or collection of an investment made pursuant to the provision of the subject Segregated Fund Custodial Agreement in excess of the price paid for such investment, and (d) any other profit, income or yield received as the result of the purchase, holding, collection or disposition of any investment made pursuant to the provisions of the subject Segregated Fund Custodial Agreement.

SCHEDULE 3.3

USED FUEL SEGREGATED FUND ORIGINAL PAYMENT SCHEDULE**(ORIGINAL PAYMENT SCHEDULE 3.3)**

The table below sets out the Payments to be made into the Used Fuel Segregated Fund at the end of each Fiscal Quarter of each Fiscal Year starting in 2002. For purposes of this Agreement, each quarterly Payment is allocated to each of the Stations. The January 1, 2002 balance in the Used Fuel Segregated Fund is \$597,769,347, allocated as follows:

Pickering A	Pickering B	Bruce A	Bruce B	Darlington
\$110,933,176	\$91,844,403	\$94,983,791	\$147,486,420	\$152,521,557

Quarterly Payments \$ - Station						
Year	Pickering A	Pickering B	Bruce A	Bruce B	Darlington	Total
2002	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2003	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2004	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2005	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2006	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2007	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2008	21,464,745	17,767,743	26,062,388	26,812,926	21,363,092	113,470,894
2009	21,464,745	17,767,743	-	26,812,926	21,363,092	87,408,506
2010	21,464,745	17,767,743	-	26,812,926	21,363,092	87,408,506
2011	21,464,745	17,767,743	-	26,812,926	21,363,092	87,408,506
2012	21,464,745	17,767,743	-	26,812,926	21,363,092	87,408,506
2013	-	-	-	26,812,926	21,363,092	48,176,018
2014	-	-	-	-	21,363,092	21,363,092
2015	-	-	-	-	21,363,092	21,363,092
2016	-	-	-	-	21,363,092	21,363,092
2017	-	-	-	-	21,363,092	21,363,092
2018	-	-	-	-	21,363,092	21,363,092
2019	-	-	-	-	21,363,092	21,363,092

SCHEDULE 3.3.1

SUMMARY OF 1999 ESTIMATED USED FUEL ELIGIBLE COSTS

The table below sets out the Used Fuel Eligible Costs consistent with the 1999 Reference Plan. The Used Fuel Eligible Costs are shown in both constant 1999 \$ and January 1, 1999 Present Value \$. For the purposes of this Agreement, the Used Fuel Eligible Costs in each year are allocated to each Station.

Year	Constant 1999 \$ Thousand					Total
	Pickering A	Pickering B	Station Bruce A	Bruce B	Darlington	
1999	5,007	4,218	4,362	6,833	6,995	27,416
2000	7,438	6,265	6,479	10,150	10,391	40,721
2001	11,951	10,066	10,410	16,309	16,696	65,432
2002	16,076	13,541	14,003	21,938	22,459	88,018
2003	17,805	14,997	15,510	24,298	24,875	97,485
2004	11,806	9,944	10,284	16,111	16,494	64,639
2005	14,144	11,913	12,320	19,302	19,760	77,439
2006	14,492	12,206	12,623	19,776	20,246	79,344
2007	16,192	13,638	14,104	22,096	22,621	88,652
2008	20,332	17,125	17,710	27,745	28,404	111,316
2009	24,838	20,921	21,635	33,895	34,699	135,987
2010	17,400	14,656	15,156	23,745	24,308	95,265
2011	17,408	14,662	15,163	23,755	24,319	95,307
2012	18,244	15,367	15,892	24,896	25,487	99,886
2013	21,799	18,361	18,989	29,748	30,454	119,351
2014	20,263	17,067	17,651	27,652	28,308	110,941
2015	20,353	17,144	17,729	27,775	28,434	111,436
2016	28,144	23,705	24,515	38,406	39,318	154,088
2017	30,931	26,053	26,943	42,210	43,212	169,348
2018	32,597	27,456	28,394	44,483	45,539	178,468
2019	30,157	25,401	26,268	41,153	42,130	165,108
2020	32,926	27,733	28,681	44,932	45,999	180,271
2021	27,203	22,913	23,696	37,123	38,004	148,938
2022	28,659	24,139	24,964	39,109	40,037	156,908
2023	29,663	24,985	25,838	40,479	41,440	162,404
2024	18,296	15,411	15,937	24,968	25,561	100,174
2025	25,350	21,352	22,081	34,593	35,414	138,791
2026	28,215	23,765	24,577	38,503	39,417	154,478
2027	28,215	23,765	24,577	38,503	39,417	154,478
2028	28,215	23,765	24,577	38,503	39,417	154,478
2029	31,594	23,837	25,147	38,619	39,535	158,731
2030	31,501	23,759	25,066	38,493	39,406	158,225

2031	31,664	23,896	25,208	38,715	39,634	159,117
2032	31,501	23,759	25,066	38,493	39,406	158,225
2033	31,501	23,759	25,066	38,493	39,406	158,225
2034	31,547	25,883	25,106	38,555	39,470	160,560
2035	31,952	26,129	25,066	38,493	39,406	161,046
2036	32,176	26,317	25,261	38,798	39,719	162,270
2037	32,364	26,476	25,425	39,055	39,982	163,302
2038	29,508	24,627	25,255	39,305	39,709	158,405
2039	29,592	24,698	25,866	39,813	39,826	159,795
2040	29,348	24,492	25,654	39,480	44,344	163,318
2041	29,348	24,492	25,654	39,480	44,344	163,318
2042	30,352	25,338	26,528	40,850	45,746	168,815
2043	30,352	25,338	26,528	40,850	45,746	168,815
2044	30,016	25,055	26,235	40,391	45,276	166,973
2045	28,781	24,014	25,159	38,706	40,186	156,846
2046	28,402	23,696	24,830	38,189	39,657	154,773
2047	28,565	23,833	24,971	38,411	39,884	155,664
2048	28,402	23,696	24,830	38,189	39,657	154,773
2049	28,466	23,750	24,886	38,277	39,747	155,125
2050	25,200	20,998	22,040	33,818	35,183	137,239
2051	22,887	19,050	20,026	30,663	31,952	124,579
2052	22,854	19,023	19,997	30,618	31,907	124,399
2053	24,181	20,140	21,153	32,428	33,760	131,661
2054	24,445	20,362	21,382	32,788	34,128	133,105
2055	16,274	13,480	14,967	22,485	22,977	90,182
2056	11,839	9,972	10,312	16,156	16,539	64,817
2057	11,134	9,378	9,698	15,194	15,554	60,958
2058	10,746	9,051	9,361	14,665	15,013	58,835
2059	11,152	9,393	9,714	15,219	15,580	61,059
2060	13,225	11,139	11,519	18,047	18,475	72,405
2061	13,235	11,147	11,528	18,061	18,489	72,460
2062	12,494	10,523	10,883	17,050	17,454	68,404
2063	13,882	11,693	12,092	18,944	19,394	76,005
2064	14,716	12,395	12,819	20,082	20,559	80,570
2065	14,248	12,001	12,411	19,443	19,905	78,007
2066	9,577	8,066	8,342	13,069	13,379	52,432
2067	9,274	7,811	8,078	12,656	12,956	50,775
2068	9,397	7,915	8,185	12,823	13,128	51,448
2069	7,691	6,478	6,700	10,496	10,745	42,111
2070	5,588	4,707	4,868	7,626	7,807	30,597
2071	4,349	3,663	3,788	5,935	6,076	23,811
2072	4,368	3,679	3,805	5,961	6,102	23,915
2073	4,311	3,631	3,756	5,864	6,023	23,605
2074	4,325	3,643	3,768	5,902	6,043	23,681
2075	4,639	3,908	4,041	6,331	6,481	25,400
2076	4,488	3,780	3,909	6,125	6,270	24,572
2077	4,814	4,055	4,194	6,570	6,726	26,358

Schedule 3.3.1

2078	5,714	4,813	4,977	7,798	7,983	31,285
2079	6,284	5,293	5,474	8,576	8,779	34,407
2080	4,265	3,593	3,715	5,820	5,959	23,352
2081	3,009	2,534	2,621	4,106	4,203	16,473
2082	2,367	1,994	2,062	3,230	3,307	12,960
2083	1,909	1,608	1,663	2,605	2,667	10,453
2084	1,909	1,608	1,663	2,605	2,667	10,453
2085	1,284	1,082	1,119	1,752	1,794	7,031
2086	1,228	1,034	1,069	1,675	1,715	6,722
2087	1,222	1,029	1,064	1,667	1,707	6,688
2088	5,816	4,899	5,066	7,937	8,125	31,844
2089	169	142	147	231	236	925
2090	-	-	-	-	-	-
2091	-	-	-	-	-	-
2092	-	-	-	-	-	-
2093	-	-	-	-	-	-
2094	-	-	-	-	-	-
2095	-	-	-	-	-	-
2096	-	-	-	-	-	-
2097	-	-	-	-	-	-
2098	-	-	-	-	-	-
2099	-	-	-	-	-	-
2100	-	-	-	-	-	-

Schedule 3.3.1

January 1, 1999 Present Value \$ thousand						
Year	Pickering A	Pickering B	Bruce A	Bruce B	Darlington	Total
1999	4,735	3,988	4,125	6,462	6,615	25,925
2000	6,842	5,763	5,960	9,338	9,559	37,463
2001	10,669	8,987	9,294	14,560	14,906	58,416
2002	13,867	11,680	12,079	18,924	19,373	75,924
2003	14,876	12,530	12,958	20,301	20,782	81,447
2004	9,608	8,093	8,369	13,111	13,422	52,603
2005	11,214	9,445	9,768	15,303	15,666	61,397
2006	11,216	9,447	9,770	15,305	15,669	61,406
2007	12,229	10,301	10,652	16,688	17,085	66,955
2008	14,642	12,333	12,754	19,981	20,456	80,167
2009	17,855	15,039	15,553	24,366	24,944	97,756
2010	12,128	10,216	10,565	16,551	16,944	66,403
2011	11,842	9,975	10,315	16,160	16,544	64,836
2012	12,170	10,251	10,601	16,608	17,002	66,632
2013	14,098	11,875	12,280	19,239	19,695	77,187
2014	12,890	10,857	11,228	17,590	18,008	70,573
2015	12,989	10,941	11,314	17,726	18,146	71,116
2016	17,045	14,357	14,848	23,261	23,813	93,324
2017	18,110	15,254	15,775	24,713	25,300	99,151
2018	18,314	15,426	15,953	24,993	25,586	100,272
2019	16,464	13,867	14,341	22,467	23,001	90,140
2020	17,267	14,544	15,041	23,563	24,122	94,537
2021	14,350	12,087	12,500	19,583	20,048	78,569
2022	14,621	12,315	12,736	19,952	20,426	80,051
2023	14,648	12,338	12,760	19,989	20,464	80,199
2024	8,704	7,331	7,581	11,877	12,159	47,652
2025	11,851	9,982	10,323	16,172	16,556	64,885
2026	12,950	10,908	11,280	17,672	18,092	70,903
2027	12,646	10,652	11,016	17,258	17,667	69,239
2028	12,350	10,403	10,758	16,854	17,254	67,619
2029	13,805	10,187	10,792	16,504	16,896	68,185
2030	13,459	9,920	10,512	16,072	16,454	66,418
2031	13,214	9,738	10,320	15,777	16,152	65,202
2032	12,863	9,466	10,034	15,337	15,701	63,400
2033	12,576	9,248	9,804	14,983	15,339	61,950
2034	12,313	10,042	9,594	14,660	15,008	61,617
2035	12,236	9,939	9,362	14,303	14,642	60,482
2036	12,042	9,782	9,215	14,079	14,413	59,530
2037	11,845	9,621	9,065	13,849	14,178	58,557
2038	10,343	8,611	8,810	13,686	13,775	55,225
2039	10,130	8,433	8,863	13,574	13,488	54,487
2040	9,838	8,188	8,608	13,180	15,183	54,997
2041	9,619	8,006	8,417	12,885	14,854	53,782

November 2004 consolidation

November 2004 consolidation

Schedule 3.3.1

2042	9,618	8,006	8,415	12,887	14,828	53,754
2043	9,403	7,827	8,227	12,598	14,505	52,561
2044	9,145	7,611	8,002	12,250	14,122	51,131
2045	8,627	7,176	7,550	11,547	12,044	46,944
2046	8,330	6,928	7,291	11,145	11,629	45,323
2047	8,184	6,806	7,163	10,950	11,425	44,529
2048	7,971	6,629	6,977	10,663	11,128	43,368
2049	7,813	6,497	6,839	10,451	10,907	42,505
2050	6,870	5,704	6,017	9,167	9,589	37,347
2051	6,184	5,128	5,419	8,235	8,632	33,598
2052	6,043	5,010	5,295	8,046	8,435	32,829
2053	6,299	5,227	5,518	8,398	8,793	34,235
2054	6,268	5,202	5,490	8,359	8,749	34,069
2055	3,993	3,287	3,744	5,542	5,659	22,225
2056	2,726	2,296	2,375	3,721	3,809	14,927
2057	2,418	2,037	2,107	3,300	3,379	13,241
2058	2,249	1,894	1,959	3,069	3,142	12,313
2059	2,317	1,951	2,018	3,162	3,237	12,685
2060	2,707	2,280	2,358	3,693	3,781	14,818
2061	2,627	2,213	2,288	3,585	3,670	14,383
2062	2,360	1,988	2,056	3,221	3,297	12,922
2063	2,457	2,070	2,140	3,353	3,433	13,454
2064	2,691	2,267	2,344	3,672	3,760	14,734
2065	2,651	2,233	2,309	3,617	3,703	14,513
2066	1,793	1,510	1,562	2,447	2,505	9,816
2067	1,656	1,395	1,443	2,260	2,314	9,068
2068	1,667	1,404	1,452	2,275	2,329	9,126
2069	1,202	1,012	1,047	1,640	1,679	6,580
2070	794	669	692	1,084	1,109	4,348
2071	623	525	543	851	871	3,414
2072	615	518	535	839	859	3,366
2073	584	492	509	797	816	3,196
2074	574	484	500	784	802	3,144
2075	644	542	561	878	899	3,524
2076	587	494	511	801	820	3,212
2077	664	560	579	907	928	3,637
2078	897	756	782	1,225	1,254	4,913
2079	1,027	865	894	1,401	1,434	5,621
2080	493	415	430	673	689	2,701
2081	256	216	223	350	358	1,402
2082	202	170	176	276	283	1,108
2083	164	138	143	224	230	900
2084	160	135	139	219	224	877
2085	100	84	87	137	140	548
2086	92	78	81	126	129	506
2087	88	75	77	121	124	484
2088	812	684	708	1,109	1,135	4,448

November 2004 consolidation

Schedule 3.3.1

2089	39	33	34	54	55	216
2090	-	-	-	-	-	-
2091	-	-	-	-	-	-
2092	-	-	-	-	-	-
2093	-	-	-	-	-	-
2094	-	-	-	-	-	-
2095	-	-	-	-	-	-
2096	-	-	-	-	-	-
2097	-	-	-	-	-	-
2098	-	-	-	-	-	-
2099	-	-	-	-	-	-
2100	-	-	-	-	-	-

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SCHEDULE 3.6

USED FUEL SEGREGATED FUND AMENDED PAYMENT SCHEDULE

Amended Payment Schedule 3.6 shall be inserted here if and when established and shall be replaced by any new Amended Payment Schedule 3.6, from time to time.

November 2004 consolidation

SCHEDULE 3.6.1

PROCEDURES FOR DETERMINING PAYMENTS BY OPG AND THE OPG NUCLEAR SUBSIDIARIES TO THE USED FUEL SEGREGATED FUND

Original Payment Schedule 3.3 and each Amended Payment Schedule 3.6 in effect from time to time shall be amended from time to time in compliance with the terms of the Agreement, including the following procedures:

1. No amendment to Original Payment Schedule 3.3 or an Amended Payment Schedule 3.6 shall be effective until approved in writing or deemed to have been approved by the Province in accordance with the provisions of this Schedule 3.6.1. Each Amended Payment Schedule 3.6 shall specify the Payment date (not earlier than the date on which the first draft of such Amended Payment Schedule 3.6 is first presented to the Province for approval, as hereinafter provided) from which it shall take effect.
2. If OPG is required pursuant to section 3.6 to prepare an Amended Payment Schedule 3.6, OPG agrees in a timely manner and, in any event, within 30 Business Days following a Triggering Event, to prepare and submit to the Province for its approval a draft Amended Payment Schedule 3.6. If OPG fails for any reason whatsoever to prepare and submit to the Province for its approval a draft Amended Payment Schedule 3.6 when so due, the Province shall have the right on two (2) Business Days notice in writing to OPG to engage such Person as the Province may then select to prepare the said draft Amended Payment Schedule 3.6 for review and approval by the Province, as aforesaid.
3. OPG and each OPG Nuclear Subsidiary agree on not less than one (1) Business Day prior written notice to OPG and to any OPG Nuclear Subsidiary to whom the Province addresses such written notice to provide to the Province and its advisors, employees, representatives and agents (and any Person appointed by the Province under item 2 above) (a) access to, and the right to inspect and to make extracts from and copies of, its respective books, records and reports (wheresoever located) during normal business hours on any Business Day, and (b) access to all

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appropriate OPG and OPG Nuclear Subsidiary personnel and advisors to ask questions of, to receive full, accurate and complete answers to such questions and to be briefed by such personnel and advisors as may be necessary or of assistance in the preparation of a draft Amended Payment Schedule 3.6.

4. The Province shall approve the draft Amended Payment Schedule 3.6 submitted to it by OPG for approval if the draft Amended Payment Schedule 3.6 has been calculated in accordance with section 3.6. If the Province has not commenced a Financial Issue or Dispute regarding a draft Amended Payment Schedule 3.6 submitted to it by OPG within 30 days of receiving the draft, the Province shall be deemed to have approved the draft Amended Payment Schedule 3.6.
5. Once the Province has given written notice to OPG that the Province has approved, or once the Province has been deemed to have approved, an Amended Payment Schedule 3.6, OPG and the OPG Nuclear Subsidiaries shall immediately provide a copy of such Amended Payment Schedule 3.6 to the Used Fuel Segregated Fund Custodian and agree to make Payments thereunder commencing on the next Payment date under the Amended Payment Schedule 3.6, provided only that if such Payment date is less than five (5) Business Days following the date of receipt by OPG of the Province's written notice approving the Amended Payment Schedule 3.6, OPG and the OPG Nuclear Subsidiaries shall be entitled if they wish to do so to make such next Payment in accordance with the Original Payment Schedule 3.3 or the Amended Payment Schedule 3.6 in effect at the time of such notice and make its/their first Payment under the new Amended Payment Schedule 3.6 on the next Payment date falling due thereafter. If OPG and the OPG Nuclear Subsidiaries exercise this option, they shall on such next Payment date pay to the Used Fuel Segregated Fund any required amounts not paid in the first Payment plus interest calculated at a rate equal to the Discount Rate.

SCHEDULE 4.3

SUMMARY OF 1999 ESTIMATED DECOMMISSIONING ELIGIBLE COSTS

The table below sets out the Decommissioning Eligible Costs consistent with the 1999 Reference Plan. Costs are shown in both constant 1999 \$ and January 1, 1999 Present Value \$. For the purposes of this Agreement, the Decommissioning Eligible Costs in each year are allocated to each Station.

Year	Constant 1999 \$ Thousand					Total
	Pickering A	Pickering B	Bruce A	Bruce B	Darlington	
1999	833	833	12,023	386	436	14,510
2000	1,828	1,828	20,281	727	875	25,539
2001	1,607	1,607	29,717	657	781	34,369
2002	1,620	1,620	26,402	650	782	31,073
2003	2,198	2,198	23,293	820	1,020	29,529
2004	2,110	2,110	19,767	759	951	25,697
2005	1,944	1,944	17,532	708	882	23,009
2006	1,616	1,616	17,256	606	746	21,839
2007	2,677	2,677	18,950	1,059	1,293	26,657
2008	2,286	2,372	19,092	813	1,024	25,587
2009	1,854	2,127	17,179	654	809	22,624
2010	3,291	3,564	18,050	1,501	1,292	27,697
2011	3,305	17,564	17,558	1,291	1,185	40,902
2012	17,236	13,692	18,523	16,024	1,230	66,705
2013	28,706	28,999	22,621	28,591	4,193	113,110
2014	32,992	25,609	24,378	35,532	5,134	123,645
2015	17,562	15,928	20,692	60,503	1,438	116,125
2016	23,147	19,221	16,839	49,773	1,344	110,325
2017	18,605	16,971	17,679	18,090	2,425	73,770
2018	18,634	17,000	28,390	16,542	2,724	83,289
2019	23,617	19,687	28,274	16,055	29,227	116,859
2020	17,107	15,473	28,063	15,988	15,217	91,847
2021	17,244	15,614	28,202	15,972	27,373	104,405
2022	17,022	15,388	28,036	15,890	27,325	103,660
2023	15,896	14,687	28,085	15,892	16,556	91,116
2024	16,147	14,939	28,270	15,994	16,530	91,881
2025	15,970	14,761	17,302	12,108	16,972	77,113
2026	15,647	14,438	17,063	15,813	16,837	79,799
2027	16,074	14,866	17,382	15,943	17,014	81,279
2028	15,611	14,402	42,367	15,824	16,822	105,027
2029	12,650	14,735	74,037	15,900	15,363	132,686
2030	12,309	14,394	114,225	15,795	16,818	173,542

2031	12,715	14,801	173,501	15,918	16,986	233,922
2032	12,632	14,718	183,058	15,917	16,952	243,277
2033	12,589	14,674	138,548	15,877	16,933	198,620
2034	13,272	13,272	94,359	16,088	17,216	154,207
2035	10,734	10,734	75,602	15,328	16,170	128,569
2036	11,049	11,049	73,075	15,450	16,300	126,922
2037	11,808	11,808	73,636	15,660	16,615	129,526
2038	9,499	9,499	14,142	10,088	15,657	58,885
2039	9,499	9,499	880	10,088	15,657	45,623
2040	9,499	17,692	880	10,112	10,799	48,983
2041	17,692	24,043	880	25,083	10,799	78,498
2042	24,043	196,524	880	55,933	10,799	288,180
2043	194,738	149,765	57	91,286	9,968	445,813
2044	149,667	145,295	0	141,562	9,928	446,452
2045	145,291	113,237	0	181,635	9,928	450,091
2046	113,233	106,898	0	159,565	9,928	389,624
2047	106,890	102,657	0	111,335	9,928	330,809
2048	102,653	67,779	0	77,741	23,656	272,029
2049	67,775	69,661	0	72,263	32,118	241,817
2050	69,657	18,015	0	72,263	264,228	424,163
2051	18,015	0	0	49,297	255,534	322,846
2052	0	0	0	0	258,100	258,100
2053	0	0	0	0	250,268	250,268
2054	0	0	0	0	240,813	240,813
2055	0	0	0	0	211,573	211,573
2056	0	0	0	0	145,194	145,194
2057	0	0	0	0	149,743	149,743
2058	35,286	35,286	22,177	13,535	27,515	133,798
2059	-	-	-	-	-	-
2060	-	-	-	-	-	-
2061	-	-	-	-	-	-
2062	-	-	-	-	-	-
2063	-	-	-	-	-	-
2064	-	-	-	-	-	-
2065	-	-	-	-	-	-
2066	-	-	-	-	-	-
2067	-	-	-	-	-	-
2068	-	-	-	-	-	-
2069	-	-	-	-	-	-
2070	-	-	-	-	-	-
2071	-	-	-	-	-	-
2072	-	-	-	-	-	-
2073	-	-	-	-	-	-
2074	-	-	-	-	-	-
2075	-	-	-	-	-	-
2076	-	-	-	-	-	-
2077	-	-	-	-	-	-

2078	-	-	-	-	-	-
2079	-	-	-	-	-	-
2080	-	-	-	-	-	-
2081	-	-	-	-	-	-
2082	-	-	-	-	-	-
2083	-	-	-	-	-	-
2084	-	-	-	-	-	-
2085	-	-	-	-	-	-
2086	-	-	-	-	-	-
2087	-	-	-	-	-	-
2088	-	-	-	-	-	-
2089	-	-	-	-	-	-
2090	-	-	-	-	-	-
2091	-	-	-	-	-	-
2092	-	-	-	-	-	-
2093	-	-	-	-	-	-
2094	-	-	-	-	-	-
2095	-	-	-	-	-	-
2096	-	-	-	-	-	-
2097	-	-	-	-	-	-
2098	-	-	-	-	-	-
2099	-	-	-	-	-	-
2100	-	-	-	-	-	-

January 1, 1999 Present Value \$ thousand						
Year	Station					Total
	Pickering A	Pickering B	Bruce A	Bruce B	Darlington	
1999	788	788	11,369	365	412	13,721
2000	1,648	1,648	18,391	656	789	23,132
2001	1,395	1,395	26,053	571	679	30,093
2002	1,340	1,340	22,167	538	648	26,033
2003	1,743	1,743	18,976	652	810	23,923
2004	1,612	1,612	15,477	581	727	20,009
2005	1,431	1,431	13,337	522	651	17,372
2006	1,146	1,146	12,733	432	530	15,987
2007	1,838	1,838	13,541	731	891	18,839
2008	1,513	1,572	13,265	540	680	17,570
2009	1,190	1,375	11,683	421	520	15,189
2010	2,048	2,227	11,909	946	801	17,930
2011	2,001	11,111	11,297	786	710	25,906
2012	10,608	8,405	11,551	9,807	720	41,091
2013	17,028	17,097	13,521	16,926	2,338	66,910
2014	18,942	14,490	14,087	20,842	2,767	71,127
2015	10,079	9,025	11,947	34,453	753	66,257
2016	13,193	10,796	9,514	27,645	685	61,833
2017	10,051	9,038	9,673	9,857	1,201	39,820
2018	9,792	8,798	15,452	8,967	1,317	44,326
2019	12,426	10,175	15,075	8,519	14,698	60,893
2020	8,600	7,643	14,609	8,276	7,871	46,999
2021	8,431	7,494	14,308	8,060	13,488	51,782
2022	8,117	7,196	13,889	7,825	13,116	50,142
2023	7,352	6,655	13,569	7,631	7,902	43,108
2024	7,253	6,569	13,309	7,481	7,685	42,297
2025	6,995	6,323	7,775	5,064	7,751	33,909
2026	6,695	6,034	7,493	7,048	7,511	34,781
2027	6,667	6,017	7,414	6,919	7,387	34,404
2028	6,336	5,698	16,284	6,710	7,140	42,168
2029	4,568	5,650	27,622	6,568	6,400	50,809
2030	4,326	5,390	41,499	6,374	6,793	64,383
2031	4,321	5,367	61,298	6,255	6,677	83,917
2032	4,168	5,197	62,838	6,103	6,503	84,810
2033	4,032	5,043	46,160	5,942	6,339	67,516
2034	4,099	4,099	30,457	5,854	6,261	50,770
2035	3,310	3,310	23,766	5,512	5,833	41,732
2036	3,294	3,294	22,299	5,412	5,727	40,026
2037	3,384	3,384	21,798	5,333	5,667	39,566
2038	2,738	2,738	4,046	2,871	5,303	17,697
2039	2,660	2,660	202	2,788	5,178	13,488
2040	2,584	4,915	195	2,714	2,964	13,372

2041	4,777	6,534	188	6,608	2,880	20,987
2042	6,352	52,750	182	14,371	2,799	76,454
2043	50,939	39,174	11	22,859	2,553	115,536
2044	38,076	36,964	0	34,441	2,474	111,956
2045	35,946	28,016	0	42,931	2,405	109,298
2046	27,244	25,719	0	36,640	2,338	91,941
2047	25,010	24,019	0	24,836	2,272	76,138
2048	23,358	15,422	0	16,848	5,307	60,935
2049	14,997	15,415	0	15,214	6,945	52,571
2050	14,989	3,877	0	14,781	55,539	89,186
2051	3,770	0	0	9,796	52,209	65,775
2052	0	0	0	0	51,258	51,258
2053	0	0	0	0	48,313	48,313
2054	0	0	0	0	45,187	45,187
2055	0	0	0	0	38,590	38,590
2056	0	0	0	0	25,742	25,742
2057	0	0	0	0	25,806	25,806
2058	4,224	4,224	2,655	1,620	3,874	16,597
2059	-	-	-	-	-	-
2060	-	-	-	-	-	-
2061	-	-	-	-	-	-
2062	-	-	-	-	-	-
2063	-	-	-	-	-	-
2064	-	-	-	-	-	-
2065	-	-	-	-	-	-
2066	-	-	-	-	-	-
2067	-	-	-	-	-	-
2068	-	-	-	-	-	-
2069	-	-	-	-	-	-
2070	-	-	-	-	-	-
2071	-	-	-	-	-	-
2072	-	-	-	-	-	-
2073	-	-	-	-	-	-
2074	-	-	-	-	-	-
2075	-	-	-	-	-	-
2076	-	-	-	-	-	-
2077	-	-	-	-	-	-
2078	-	-	-	-	-	-
2079	-	-	-	-	-	-
2080	-	-	-	-	-	-
2081	-	-	-	-	-	-
2082	-	-	-	-	-	-
2083	-	-	-	-	-	-
2084	-	-	-	-	-	-
2085	-	-	-	-	-	-
2086	-	-	-	-	-	-
2087	-	-	-	-	-	-

SCHEDULE 4.3 - Page 6

2088	-	-	-	-	-	-
2089	-	-	-	-	-	-
2090	-	-	-	-	-	-
2091	-	-	-	-	-	-
2092	-	-	-	-	-	-
2093	-	-	-	-	-	-
2094	-	-	-	-	-	-
2095	-	-	-	-	-	-
2096	-	-	-	-	-	-
2097	-	-	-	-	-	-
2098	-	-	-	-	-	-
2099	-	-	-	-	-	-
2100	-	-	-	-	-	-

SCHEDULE 4.6

DECOMMISSIONING SEGREGATED FUND PAYMENT SCHEDULE

Original Payment Schedule 4.6 shall be inserted here if and when established. Original Payment Schedule 4.6 shall be replaced by any new Amended Payment Schedule 4.6, if and when established and from time to time thereafter.

SCHEDULE 4.6.1
PROCEDURES FOR DETERMINING PAYMENTS BY OPG AND THE
OPG NUCLEAR SUBSIDIARIES TO THE DECOMMISSIONING SEGREGATED
FUND

Original Payment Schedule 4.6 shall be established and Original Payment Schedule 4.6 and each Amended Payment Schedule 4.6 in effect from time to time shall be amended from time to time in compliance with the terms of the Agreement, including the following procedures:

1. Neither Original Payment Schedule 4.6 nor any Amended Payment Schedule 4.6 shall be effective until approved in writing or deemed to have been approved, by the Province under this Schedule 4.6.1. The Original Payment Schedule 4.6 and each Amended Payment Schedule 4.6 shall specify the Payment date (not earlier than the date on which the first draft of Original Payment Schedule 4.6 or an Amended Payment Schedule 4.6 is first presented to the Province for approval, as hereinafter provided) from which it shall take effect.
2. If OPG is required pursuant to section 4.6 to prepare an Original Payment Schedule 4.6 or an Amended Payment Schedule 4.6, OPG agrees in a timely manner and, in any event, within 30 Business Days following a Triggering Event, to prepare and submit to the Province for its approval a draft Original Payment Schedule 4.6 or an Amended Payment Schedule 4.6, as applicable. If OPG fails for any reason whatsoever to prepare and submit to the Province for its approval a draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 when so due, the Province shall have the right on two (2) Business Days notice in writing to OPG to engage such Person as the Province may then select to prepare the said draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 for review and approval by the Province, as aforesaid.
3. OPG and each OPG Nuclear Subsidiary agree on not less than one (1) Business Day prior written notice to OPG and to any OPG Nuclear Subsidiary to whom the Province addresses such written notice to provide to the Province and its

representatives and agents (and any Person appointed by the Province under item 2 above) (a) access to, and the right to inspect and to make extracts from and copies of, its respective books, records and reports (wheresoever located) during normal business hours on any Business Day, and (b) access to all appropriate OPG and OPG Nuclear Subsidiary personnel and advisors to ask questions of, to receive full, accurate and complete answers to such questions and to be briefed by such personnel and advisors as may be necessary or of assistance in the preparation of a draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6.

4. The Province shall approve the draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 submitted to it by OPG for approval if the draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 has been calculated in accordance with section 4.6. If the Province has not commenced a Financial Issue or Dispute regarding a draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 submitted to it by OPG within 30 days of receiving the draft, the Province shall be deemed to have approved the draft Original Payment Schedule 4.6 or Amended Payment Schedule 4.6.
5. Once the Province has given written notice to OPG that the Province has approved, or once the Province has been deemed to have approved, an Original Payment Schedule 4.6 or Amended Payment Schedule 4.6, OPG and the OPG Nuclear Subsidiaries shall immediately provide a copy of such Original Payment Schedule 4.6 or Amended Payment Schedule 4.6 to the Decommissioning Segregated Fund Custodian and agree to make Payments thereunder commencing on the first or next Payment date under the Original Payment Schedule 4.6 or Amended Payment Schedule 4.6, as applicable, provided only that if such Payment date is less than five (5) Business Days following the date of receipt by OPG of the Province's written notice approving the Original Payment Schedule 4.6 or Amended Payment Schedule 4.6, OPG and the OPG Nuclear Subsidiaries shall (a) in the case of the Original Payment Schedule 4.6, have up to 10 Business Days following the first Payment date to make such first Payment plus interest calculated at a rate equal to the Discount Rate from the first Payment date to the date such Payment is made or (b) in all other cases, be entitled if they wish to do so to make such next

Payment in accordance with the Original Payment Schedule 4.6 or the Amended Payment Schedule 4.6 in effect at the time of such notice and make its/their first Payment under the new Amended Payment Schedule 4.6 on the next Payment date falling due thereafter. If OPG and the OPG Nuclear Subsidiaries exercise this option, they shall on such next Payment date pay to the Decommissioning Segregated Fund any required amounts not paid in the first Payment plus interest calculated at a rate equal to the Discount Rate.

SCHEDULE 6.1
FORM OF COMMITMENT IN LIEU

TO ONTARIO POWER GENERATION INC.

Pursuant to subsection [3.9.2/4.4.2] of the Ontario Nuclear Funds Agreement dated as of April 1, 1999 to which each of the Her Majesty in right of Ontario and Ontario Power Generation Inc. is a party (the "Agreement"), [Her Majesty in right of Ontario/Ontario Electricity Financial Corporation] hereby agrees, subject to and in accordance with the provisions of the Agreement, to make payments in Cash to the [Used Fuel Segregated Fund/ Decommissioning Segregated Fund] up to [\$■] plus interest thereon calculated at an annual rate equal to the Discount Rate (as defined in the Agreement), calculated daily, from and after [insert date] [the date of this Commitment in Lieu] to the date upon which a payment in Cash is made to the [Segregated Fund in question].

This Commitment in Lieu is not transferable or negotiable without the written consent of [the Province in right of Ontario/Ontario Electricity Financial Corporation].

DATED [insert date]

Reverse Side:

Date	Opening Undrawn Balance	Payment or Reduction	Increase	Annotation (1)	Initials	Closing Undrawn Balance

(1) Make annotation if change in undrawn balance arises as a result of the provisions of subsection [3.10.3][4.7.3].

SCHEDULE 11.2
DISPUTE RESOLUTION PROCEDURE

PART I

1. Either OPG (on its own behalf and/or on behalf of any OPG Nuclear Subsidiary), or the Province (on its own behalf or on behalf of OEFC) may refer any Dispute that is not prohibited by the terms of the Agreement to be determined under the provisions of this Schedule 11.2 to a Committee by giving written notice to the other party to the Dispute and to both members of the Committee at the addresses of the members of the Committee provided to each party to the Dispute and otherwise in accordance with the notice provisions of the Agreement. Each party to the Dispute shall provide written information regarding its position in respect of the issue(s) in dispute to the Committee and the other party to the Dispute in a timely manner, and each party to the Dispute shall have a reasonable opportunity (not to exceed three (3) Business Days from the date the notice is provided) to prepare and deliver to the Committee and the other party to the Dispute such written responses to the material filed with the Committee by any other party to the Dispute. The Committee shall have responsibility and authority to hear and negotiate a resolution of any Dispute referred to it.
2. If the Committee cannot reach agreement on a resolution of the Dispute within 10 Business Days of receipt of the said notice then either party to the Dispute may, if it chooses to do so, refer the matter to Dispute Resolution in accordance with Part II of this Schedule 11.2 by delivery of written notice to the other party to the Dispute to such effect within 15 Business Days of receipt of the notice under item 1, unless the Committee has resolved the Dispute prior to the delivery of the written notice to the other party to the Dispute under this item 2.
3. If the Dispute is resolved in accordance with this Part I, then the settlement shall be rendered in writing, signed by each member of the Committee and such written decision shall be final and binding on OPG, each OPG Nuclear

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Subsidiary, the Province and OEFC, and shall not be subject to any appeal or review procedure. The application of subsection 7(2) of the Arbitration Act, 1991 (Ontario) is expressly excluded.

PART II

The following rules and procedures shall govern any Dispute referred for Dispute Resolution by either OPG or the Province under Part I of this Schedule 11.2:

4. Initiation of Dispute Resolution Proceedings.

- (a) The Claimant shall in the notice given by it to the Respondent under item 2 of Part I specify particulars of the Dispute and give the name and address of the Person it wishes to be appointed as the Arbitrator. Within 10 Business Days immediately following receipt of such notice, the Respondent shall give notice to the Claimant advising either that the Respondent accepts the Arbitrator proposed by the Claimant, or that the Respondent wishes to appoint an additional Arbitrator, in which case, the Respondent shall appoint and provide the name of such additional Arbitrator in its responding notice. If no such notice is given within such 10 Business Day period, the Respondent shall be irrevocably deemed to have accepted the single Arbitrator proposed by the Claimant as the Arbitrator of the Dispute.
- (b) If the Respondent exercises its right to do so and appoints an additional Arbitrator pursuant to item 4(a) of this Part II, then the Arbitrators so appointed shall within 10 Business Days of the appointment of the second Arbitrator, meet and agree on the appointment of one additional Arbitrator as chair of the Dispute Resolution board, and the first two Arbitrators shall forthwith notify the Claimant and the Respondent in writing of such appointment. If the two Arbitrators cannot agree upon the appointment of a third Arbitrator to act as chair, either party to the Dispute shall have the right to apply

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to the Ontario Superior Court of Justice under the *Arbitration Act, 1991* (Ontario) for the sole purpose of having the said Court appoint a third Arbitrator to act as chair of the Dispute Resolution board. The appointment of the chair by the Court shall be final and binding on both the Respondent and the Claimant and shall not be subject to any appeal or review procedure. Upon the appointment of the chair of the Dispute Resolution board, the chair and the two Arbitrators previously appointed shall constitute the board of Arbitrators for the purpose of hearing the Dispute.

5. Submission of Written Statements.

- (a) Within five (5) Business Days after the appointment of the last Arbitrator, the Claimant shall deliver to the Respondent and to each Arbitrator its Claim.
- (b) Within 15 Business Days after the receipt of the Claim, the Respondent shall deliver to the Claimant and to each Arbitrator its Answer.
- (c) If a Respondent fails to deliver an Answer within the time limit referred to in item 5(b) of this Part II, the Respondent shall be irrevocably deemed to have admitted the Claim unless within such time limit the Respondent shall have delivered a notice of intent to deliver the Answer, in which case the Answer shall be delivered within 10 Business Days of Claimant's receipt of such notice, and if the Respondent fails to deliver an Answer within such 10-Business Day period, the Respondent shall be irrevocably deemed to have admitted the Claim in full.
- (d) Within 10 Business Days after the delivery of the Answer, the Claimant may deliver to the Respondent and to each Arbitrator a Reply.

- (e) Within the time provided for the delivery of the Answer, the Respondent may also deliver to the Claimant and to each Arbitrator a Counter-Claim. Within 15 Business Days of the delivery of a Counter-Claim, the Claimant shall deliver to the Respondent and to each Arbitrator an answer to the Counter-Claim unless within such time the Claimant shall have delivered a notice of intent to deliver an answer to the Counter-Claim, in which case such answer shall be delivered within 10 Business Days of the Claimant's receipt of such notice, and if the Claimant fails to deliver its answer to the Counter-Claim within such 10 Business Day period, the Claimant shall be irrevocably deemed to have admitted the Counter-Claim in full. Within 10 Business Days after the delivery by the Claimant of an answer to the Counter-Claim, the Respondent may deliver to the Claimant and to each Arbitrator a reply to the answer to the Counter-Claim.
- (f) Within 10 Business Days after the delivery of the last of the Claim, Answer, Counter-Claim, answer to the Counter-Claim and Reply, each party to the Dispute shall produce a list of all relevant documents in its possession, power or control, excluding documents which are the subject of claims for privilege. A party to the Dispute may specify any document or documents on the list of the other party of which it desires to be provided a copy, and copies shall be provided subject to payment for the reasonable costs thereof.
- (g) Following delivery of the last of the Claim, Answer, Counter-Claim, answer to the Counter-Claim and Reply or expiry of the time for such delivery, the Arbitrator(s) shall give directions for the further conduct of the Dispute Resolution, provided that in any event the hearing shall take place within 45 Business Days after the delivery of the last of the Claim, Answer, Counter-Claim, answer to the Counter-Claim and Reply or expiry of the time for such delivery.

- (h) The time limits set for the delivery of the documents referred to in item 5(a) to (f) inclusive of this Part II may be extended by the Arbitrator(s) for such period and for such reasons as they in their discretion may determine upon application made to them by either the Claimant or a Respondent, as the case may be, on written notice to the other, before the expiry of the time limit in issue or within three (3) Business Days thereafter and, in the event that the other wishes to oppose the application, it or they shall be given an opportunity to be heard on the application. Any failure to comply with such time limits pursuant to the terms of this Schedule 11.2 that is subject to such an extension shall be cured by that extension. For greater certainty, the Parties agree that the foregoing right of the Arbitrator(s), being the exercise of an absolute discretion, cannot be the subject matter of a Dispute or Financial Issue under this Agreement or of any other proceeding at law initiated by any party to the Dispute.

6. Meetings and Hearings.

- (a) The hearing will take place in Toronto, Ontario or in such other place as the Claimant, Respondent and Arbitrator(s) unanimously agree to in writing. Subject to any adjournments that the Arbitrator(s) allow, the hearing will be continued on successive Business Days until it is concluded.
- (b) All meetings and hearings will be private and confidential unless all parties to the Dispute Resolution otherwise agree.
- (c) Any party to the Dispute may be represented at any meetings or hearings by legal counsel.
- (d) To the extent that the Arbitrator(s) determine in good faith that it is in the interests of the parties and expeditious to do so, the Arbitrator(s) shall have the right to (i) vary the rules and procedures set out in the

Arbitration Act, 1991 (Ontario) and (ii) prescribe such additional rules and procedures relating to the conduct of the Dispute Resolution (including rules permitting the compulsion of witnesses, discovery of witnesses under oath, cross-examination and re-examination of witnesses).

7. The Decision.

- (a) Any decision of the Arbitrator(s) made with respect to any Dispute or with respect to any aspect of, or any issue related to, the Dispute (including the procedures that shall govern the Dispute resolution) shall be made by either the Arbitrator or by the majority of the Arbitrators (or in default of agreement by such majority, then by the chair of the Dispute Resolution board), as the case may be. The reasons for the decisions of the Arbitrator(s) with respect to the Dispute shall within 10 Business Days of the completion of the hearing be rendered in writing and delivered to the parties unless that time period is extended for a fixed period by the Arbitrator(s) on written notice to each party to the Dispute because of illness or other cause beyond the control of the Arbitrator(s).
- (b) The decision shall be final and binding on the parties to the Dispute Resolution (including OEFC and each OPG Nuclear Subsidiary) and shall not be subject to any appeal or review procedure.

8. The Award.

The Arbitrator(s) shall have jurisdiction to award costs of the Dispute Resolution Procedure, including the fees of the Arbitrator(s), as between the Claimant and the Respondent as the Arbitrator(s) see fit, and to direct the payment of interest in respect of any award at such rates and from and to such dates as are determined by the Arbitrator(s) to be appropriate. Subject to Applicable Law, the Arbitrator(s) may deem in

writing all or any part of such awarded costs to be Used Fuel Eligible Costs or Decommissioning Eligible Costs, as the Arbitrator so designates.

9. Application of the *Arbitration Act, 1991* (Ontario).

The Dispute Resolution Procedure provided for in this Part II shall be governed by the provisions of the *Arbitration Act, 1991* (Ontario) except to the extent that the provisions of the *Arbitration Act, 1991* (Ontario) are inconsistent with the terms of the Dispute Resolution Procedure set forth in this Schedule 11.2, in which case, to the extent permitted by law, the terms of this Schedule 11.2 shall govern. The application of subsection 7(2) of the *Arbitration Act, 1991* (Ontario) is expressly excluded.

PART III

10. Computation of Time.

- (a) For the purposes of computation of time under the provisions of this Schedule 11.2, except where a contrary intention appears:
 - (i) where there is a reference to a number of Business Days between two events, they shall be counted by excluding the Business Day on which the first event happens and including the Business Day on which the second event happens; and
 - (ii) Service of a document made after 4 p.m. (Toronto time) or at any time on a day that is not a Business Day shall be deemed to have been made on the next Business Day.
- (b) The Parties may by mutual agreement (or the Arbitrator(s) may by the exercise of their discretion) extend any time limit set forth in this Schedule 11.2. For greater certainty, the Parties agree that the foregoing right of the Arbitrator(s), being the exercise of an absolute discretion, cannot be the subject matter of a Dispute or Financial Issue

under this Agreement or of any other proceeding at law initiated by any of the Parties.

11. Notice.

Notice and the service of documents shall be governed by the applicable provisions of the Agreement.