

## OPTION AGREEMENT

**THIS AGREEMENT is made as of the ● day of ●, 2006 (hereinafter referred to as the "Effective Date")**

**B E T W E E N:**

**AIM POWERGEN CORPORATION**  
(hereinafter referred to as "AIM")

**OF THE FIRST PART**

- and -

●

**OF THE SECOND PART**

- and -

●

**OF THE THIRD PART**

(● and ● shall be herein collectively referred to as the "Property Owner")

(AIM and the Property Owner may be herein collectively referred to as the "Parties")

**WHEREAS** AIM is planning to construct and install test wind towers (the "Towers") and gather data from such Towers;

**AND WHEREAS** AIM will analyze such data and determine whether or not it wants to construct, own or operate one (1) or more wind turbines (the "Turbine(s)") on properties located in the vicinity in which the Towers are located, including on the [Property][Properties] as defined below;

**AND WHEREAS** AIM and the Property Owner have agreed to enter into this Agreement for the purpose of granting to AIM an exclusive option to acquire certain easement rights for purposes of the siting of the Turbines on the [Property][Properties] as defined below;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

**1. OPTION TO ENTER INTO EASEMENT AND COMPENSATION**

- 1.1 Subject to the terms and conditions set out herein, the Property Owner hereby grants AIM the exclusive option to acquire an easement in respect of the property[ies] described as:

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**([the "Property"] [collectively the "Properties"])**

for the purposes of owning and/or operating the Turbine(s) on the [Property][Properties] (the "Option"). The Option shall be exercisable by AIM upon its sole discretion. Upon written notice by AIM to the Property Owner that AIM has exercised the Option, the Property Owner shall, subject to Section 2.2, duly execute and deliver such easement in the form attached hereto as Schedule "A" upon the terms and conditions provided therein (the "Easement").

- 1.2 The Option shall be exercisable by AIM from the Effective Date up to and including the ● day of ●, 20●. [Note: this should be the date before the day of the effective date]
- 1.3 In consideration of the Option granted AIM shall make six payments to the Property Owner for a total of ● Dollars and ● Cents (\$●)[acreage x \$10 x term] as follows:

[Effective Date], 2006.....\$ ●[acreage x \$10/2]

●, 2007.....\$ ● [acreage x \$10/2]

●, 2008..... \$ ● [acreage x \$10]

●, 2009..... \$ ● [acreage x \$10]

●, 2010..... \$ ● [acreage x \$10]

●[Section 4.1(d) Date], 2011..... \$ ●[acreage x \$10]

**2. SCOPE OF EASEMENT**

- 2.1 AIM may, at its sole discretion and at its sole cost and expense, explore and decide upon any or all of the following options with respect to the nature and scope of the Easement:
- (a) Seek an exemption from the provisions of the Planning Act (Ontario) which restricts the granting of easements over a part of a Property Owner's property to twenty-one (21) years and thereby take an easement for a term of up to forty (40) years (including any renewals of the term);

- (b) Seek consent from the local authority in a hearing before the Committee of Adjustment allowing the Property Owner to grant to AIM an easement for a term of up to forty (40) years (including any renewals of the term);
- (c) Take an easement over the entirety of the Property Owner's property, including any abutting lands thereby allowing AIM to take an easement for a term of up to forty (40) years (including any renewals of the term); and
- (d) Limit the term of the easement to twenty-one (21) years less one (1) day (including any renewals of the term), thereby complying with the existing provisions of the Planning Act (Ontario).

AIM acknowledges that in deciding upon one of the above options that the ranking of the options from the Property Owner's perspective is (a) being the most preferred option and proceeding in descending order with (d) being the least preferred option and that AIM shall, upon due exploration, decide upon the most preferable of these options from the Property Owner's perspective that AIM, acting in its sole discretion, deems is available. Notwithstanding the previous sentence (i) AIM shall not decide upon any of options (b), (c) or (d) above until after November 1, 2005 and having made due inquiries regarding the feasibility of the option in (a), and (ii) before deciding upon (c) or (d) above, AIM shall have at least made the necessary applications required in furtherance of (b) and been denied consent by the local authority.

2.2 In the event that AIM exercises the Option and decides upon a scope of easement pursuant to Subsection 2.1 of this Agreement, it shall be understood and agreed by the Parties that the form of Easement attached as Schedule "A" hereto shall be amended by the Parties as required to accurately reflect such scope of the Easement in a commercially reasonable and good faith manner and in such a way so as not to unduly prejudice the Property Owner's or AIM's ability to conduct their respective businesses. In particular, if the option enumerated under section 2.1(c) is decided upon, the form of Easement shall be amended to clarify that AIM has the right to use only the lands necessary to access and use the Turbines and the Works and to generate and convey electricity from the Turbines.

2.3 a) In the event that the option enumerated under section 2.1 (c) is exercised, and an easement agreement is entered into pursuant to such option, if during the term of such easement, AIM becomes aware that statutory exemptions are available under the Provincial Planning Act (or equivalent) (either by general statutory amendment or site specific exemption) to make option 2.1 (a) an option that is in AIM's sole discretion, acting reasonably, a commercially viable one, then AIM shall proceed to either amend the easement to restrict the lands covered by the easement to a defined area of the property, or, in the alternative, release the easement over the whole of the property in exchange for a grant of easement over the defined area.

b) In the event that the option enumerated under section 2.1 (c) is exercised, and an easement agreement is entered into pursuant to such option, should the Property Owner become aware during the term of the easement that the planning policies of the local municipal planning authority having jurisdiction have been amended or modified to allow a severance for easements of the nature and type required under option 2.1 (b), the

Property Owner shall inform AIM. If AIM becomes aware of such amendment or modification to local planning policies by way of the Property Owner or otherwise, AIM shall proceed to make application to the local planning authority to seek consent under the Planning Act (or equivalent) for the granting of an easement to a defined area of the Property Owners property. In the event of such consent being granted, the easement over the entirety of the owners' property shall be released and a new easement granted to AIM over the defined area (as approved by the consent).

(c) Notwithstanding any of the provision of this Agreement including section 2.3(a) and section 2.3(b), in fulfilling its obligations pursuant to section 2.3(a) and section 2.3(b), AIM shall be under no obligation to do any such act, including releasing an easement and entering into a new easement, that would, in AIM's sole discretion acting reasonably, negatively affect either the operation of or output from the Turbines or AIM's interest in the applicable lands, including by affecting AIM's registration with the applicable land registry office in relation to the Property. If such negative affect does exist, AIM and the Property Owner shall work together to devise a mutually agreeable solution that (i) on the one hand gives effect to the intention of section 2.1(a) or section (b), as the case may be, and (ii) on the other hand preserves both the operation of and output from the Turbines and AIM's interest in relation to the Property, including its priority of registration.

(d) For greater certainty, in amending an existing easement or entering into a new easement pursuant to section 2.3(a) and 2.3(b) hereof, the decision as to what is the defined area of the property for such easement shall be AIM's in its sole discretion acting reasonably, bearing in mind the area required in relation to the Works (as defined in the Form of Easement) and any restrictions stipulated in Schedule "DD" of such Form of Easement.

(e) AIM's obligation to act under this section ends once an amended or new easement pursuant to either section 2.3(a) or section 2.3(b) has been entered into. For greater certainty, if AIM and the Property Owner have entered into an amended or new easement pursuant to section 2.3(b) and statutory exemptions subsequently become available under the Provincial Planning Act (or equivalent) to make option 2.1(a) viable, AIM shall be under no obligation pursuant to section 2.3(a) hereof or otherwise to amend the easement or enter into a new easement to give effect to such option 2.1(a).

(f) All cost associated with the foregoing including any surveying fees, legal fees, application fees, land registry fees, etc. shall be borne by AIM. Notwithstanding the foregoing, the Property Owner shall be responsible for their own legal fees associated with this section 2.3.

### **3. COVENANTS, REPRESENTATIONS AND WARRANTIES**

- 3.1 [Subject to the oil and gas leases specifically associated with [the Property]][any of the Properties], which oil and gas leases are described below and shall be addressed by the Parties in accordance with Section 3.9 hereto, t] [T]he Property Owner [or list individual owner(s) if multiple properties with different ownership %] hereby

represents and warrants that [it/they] [is/are] the legal and beneficial owner[s] in fee simple of [the [Property][Properties]][the properties enumerated and described in Section 1.1] [Note: in the event of multiple owners and multiple properties, where the owners own different properties, the language in the latter square-bracket should be used] and [has/have] the legal right and authority to grant to AIM, its servants, agents, consultants, contractors and sub-contractors the right to access the Property[ies] on the terms and conditions set out herein and [has/have] not and will not grant an easement or any other property right, including any petroleum or natural gas lease, related to [the Property][any of the Properties] to any other person that would interfere with the rights granted to AIM hereunder [./:

**Property:**

**Oil & Gas Lease:**

**Pooling Agreement:]**

**[NTD: Repeat this section if required for multiple ownership of multiple properties.]**

- 3.2 [The Property Owner further hereby represents and warrants that it is a corporation, duly organized, validly existing and in good standing under the laws of the Ontario and it has the rights, powers and privileges to execute and deliver this Agreement and to perform its obligations hereunder.]**

- OR -

**[The Property Owner further hereby represents and warrants that he/she is at least eighteen (18) years of age and [is either not married or his/her spouse has consented to the execution of this Agreement in accordance with the form of Consent of Spouse attached as Schedule "B" hereto][is the spouse of • who is also a party to this Agreement.] [Note to draft: do as separate representations and warranties if spouses are parties to this agreement/owners of the Property – one rep and warranty for each spouse. Note corresponding cross-referencing changes in the rest of this Article]**

- 3.3 AIM hereby represents and warrants that it is a corporation, duly organized, validly existing and in good standing under the laws of Ontario and that it has the rights, powers and privileges to execute and deliver this Agreement and to perform its obligations hereunder.**
- 3.4 AIM has sought and received independent legal counsel in respect of this Agreement as evidenced by the execution of a Certificate of Independent Legal Advice in the form attached hereto as Schedule "C" and understands the nature and consequences of the Agreement and is signing it voluntarily.**
- 3.5 [The Property Owner][Each of •, •, and •] has sought and received independent legal counsel in respect of this Agreement as evidenced by the execution of a Certificate of Independent Legal Advice in the form attached hereto as Schedule**

**"D", understands the nature and consequences of the Agreement and is signing it voluntarily.]**

- OR -

**[The Property Owner][Each of ●, ●, and ●] has been offered independent legal counsel in respect of this Agreement and has been offered financial compensation by AIM to assist in defraying the costs associated with such legal counsel and has refused to obtain independent legal counsel as evidenced by the execution of a Waiver of Independent Legal Advice in the form attached hereto as Schedule "D" and [the Property Owner][ each of ●, ●, and ●] understands the nature and consequences of the Agreement and is signing it voluntarily.]**

3.6 The Property Owner hereby agrees and covenants to:

- (a) subsequent to the execution and delivery of this Agreement and without any additional consideration, execute and deliver or cause to be executed and delivered any further legal instruments, including, without limitation, any required consents, and perform any acts which are or may become necessary to effectuate the purposes of this Agreement and to complete the transactions contemplated hereunder; and
- (b) without limiting the generality of Section 3.6(a), complete and execute the "Appointment and Authorization of Agent" (the "Agency Form") attached hereto as Schedule "E" which Agency Form may be used by AIM for the purposes of Section 2.1(b).

3.7 AIM hereby covenants that should it elect to exercise the Option, it shall, at its sole cost and expense and prior to accessing the **[Property][Properties]** for any purpose related to the siting, assessment or construction of the Turbine(s) contemplated to be erected by AIM herein, provide and maintain in full force and effect with financially responsible insurance carriers, insurance with commercially reasonable coverages, which shall remain in effect during the Term of the Easement (as such term is defined therein) or any extension thereof or as otherwise specified herein and which shall, if applicable, include (but not be limited to):

- (a) automobile liability insurance covering owned, non-owned, hired, leased and rented automobiles and automotive equipment providing coverage for injury, death, or property damage;
- (b) commercial general liability insurance covering bodily injury, death, personal injury and damage to property; and
- (c) workers compensation as required by the Ontario Workplace Safety and Insurance Act (Ontario) or similar legislation covering all persons employed by AIM or subcontractors for work performed under this Agreement,

and AIM shall, prior to starting work on the **[Property][any of the Properties]**, supply the Property Owner with a certificate of insurance completed by a duly authorized

representative of AIM's insurer certifying that such insurance has been obtained by AIM, outlining the applicable coverages and indicating that the coverages will not be cancelled, non-renewed, nor materially changed by endorsement or through issuance of other policies of insurance which restricts or reduces coverage, without ninety (90) days advance written notice to the Property Owner.

- 3.8 AIM shall, prior to exercising the Option, research industry standards for bonding and performance assurance requirements associated with the wind industry for a project of the size and scope contemplated by AIM and hereby agrees, in consultation with the Property Owner, to act in a commercially reasonable manner to comply with the industry practice for bonding for wind farms such as AIM's such that the obligations of paragraph 23 of the form of Easement attached as Schedule "A" can be fully satisfied.
- 3.9 **[Note to draft: delete section entirely if there are no oil and gas leases and note corresponding cross-referencing changes in rest of Agreement]**
- (a) **[AIM shall, prior to exercising the Option, consult with the holders of the petroleum and natural gas leases or similar instruments listed in section 3.1 [and ●] (the "Oil and Gas Leases") upon [the Property][any of the Properties] and AIM and the Property Owner shall use best efforts to resolve any issues that may arise out of the exercise of the Option vis-à-vis the Oil and Gas Leases with the goal of ensuring that the Oil and Gas Leases and the Easement can both exist over [the Property][the relevant Properties].**
- (b) **The Property Owner further represents and warrants that other than the Oil and Gas Leases there are no petroleum or natural gas leases registered against [any of] the [Property][Properties].]**
- 3.10 (a) **[The Property Owner specifically acknowledges that a title search has not been conducted on the Properties and that AIM is entering into this Agreement on the basis of the representations and warranties provided by him hereunder and in particular those provided in sections [3.1 and 3.2] [Note to draft: add additional section number(s) if have additional representations and warranties, i.e. due to spouse executing agreement]. If after the Effective Date AIM conducts a title search and such search reveals, in AIM's sole opinion, that the Property Owner is not the legal and beneficial owner of the Properties or does not have the legal right and authority to grant to AIM, its servants, agents, consultants, contractors and sub-contractors the right to access the Properties or has granted an easement or other property right related to the Properties (a "Prior Encumbrance") to any other person that would interfere with the rights granted to AIM hereunder, AIM may, in its sole discretion, terminate this Agreement effective immediately.**
- (b) **If the title search reveals a Prior Encumbrance, AIM, in its sole discretion, may decide to consult with the holders of such Prior Encumbrance and the Property Owner shall use best efforts to resolve any issues that may arise out of the exercise of the Option vis-à-vis the Prior Encumbrance with the goal of**

**determining whether the Prior Encumbrance and the Easement can both exist over the Properties.**

- (c) Following the title search, AIM may decide, in its sole discretion acting reasonably, to amend this Agreement and the Schedules hereto to reflect the results thereof. In such event, the Property Owner covenants to execute such amendment or other document as AIM or its solicitors, in their sole discretion, deem necessary in order to give effect to this Agreement.**
- (d) Notwithstanding section 3.10(b), AIM may choose to terminate this Agreement at any time pursuant to section 3.10(a).]**

**3.11 If subsequent to the Effective Date AIM executes an agreement with another Property Owner along the east shore of Lake Simcoe that contains more preferable provisions to the Property Owner in relation to any of the compensation, liability, indemnification, insurance, or bonding, AIM shall prepare an amending agreement to this Agreement to be executed by AIM and the Property Owner that provides the Property Owner with the benefit of such preferable provisions**

#### **4. TERMINATION**

**4.1 Except as otherwise stipulated herein, this Agreement shall terminate at the earlier of:**

- (a) failure by AIM to pay the requisite payments provided for hereunder, unless otherwise agreed to by the Parties;**
- (b) receipt by the Property Owner of notice from AIM of AIM's desire to terminate the Agreement;**
- (c) [termination by AIM pursuant to section 3.10]; or**
- (d) 11:59 p.m. on ●, 2010 [5 years from the execution date – and this should be the date before the day of the effective date].**

**4.2 The representations, warranties, covenants and agreements contained in Section 4.3 hereof shall survive the termination of this Agreement and remain in full force and effect.**

**4.3 Subject to the next sentence, in the event that this Agreement is terminated on the date stipulated in Section 4.1(b)(the "Early Termination Date"), AIM shall be released from having to pay any of the balance outstanding on the total consideration of ● (\$●) [acreage x \$10 x term]. Notwithstanding any other provision to the contrary, upon the Early Termination Date, AIM shall pay to the Property Owner the prorated portion ● (\$●) [acreage x \$10 x term] for the period beginning on the Effective Date and ending on the Early Termination Date, which prorated portion shall be calculated at a rate per day equal to 1/365th of ● (\$●) [acreage x \$10] less any amounts already paid on account thereof.**

**4.4 [For greater certainty, if AIM terminates the Agreement pursuant to section 3.10, AIM shall be released from having to pay any of the balance outstanding on the**



total consideration of ● Dollars (\$●), including the prorated portion of ● Dollars (\$●) for the period from the anniversary date of the Effective Date immediately prior to the date the Agreement is terminated pursuant to section 3.10.]

## **5. NOTICES**

- 5.1 Any notice or other writing required or permitted to be given under this Agreement or for the purposes of this Agreement (referred to in this Section as a "notice") to the other Party shall be sufficiently given if delivered personally, or if sent by prepaid registered mail or if transmitted by fax or other form of recorded communication tested prior to transmission to such other Party:

In the case of notice to AIM, to:

AIM PowerGen Corporation  
200 Consumers Road  
Suite 604  
Toronto, Ontario M2J 4R4

Attention: President/CEO  
Tel: (416) 502-0993  
Fax: (416) 502-1415

In the case of the Property Owner, to:

●  
●  
●, Ontario ●

Attention: ●  
Tel: (519) ●

or at such other address as the Party to whom such writing is to be given shall have last notified to the Party giving the same in the manner provided in this Section. Any notice personally delivered to the Party to whom it is addressed as provided in this Section shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to the address and in the manner provided for in this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing in Ontario. Any notice transmitted by fax shall be deemed to have been given and received on the first Business Day after its transmission.

- 5.2 For the purposes of this Section, the term "Business Day" means every day except Saturdays, Sundays and statutory holidays in the Province of Ontario.

## **6. GENERAL PROVISIONS**

- 6.1 This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 6.2 (a) All matters in dispute between the Parties pursuant to this Agreement shall be determined by arbitration in accordance with this Section.
- (b) In the event of a dispute with respect to any matter within the purview of this Agreement, one of the Parties may serve upon the other Party a notice requesting that the Parties proceed to arbitration (the "Arbitration Notice"). Upon receipt of an Arbitration Notice, the Parties shall have ten (10) days from the date of receipt of the notice to agree upon an arbitrator who is an attorney, engineer, or energy industry executive having expertise in the subject area of the matters, but not the matters themselves, giving rise to the dispute that is the subject of the arbitration. If the Parties are unable to agree on an arbitrator within that time-period, each Party shall appoint a single arbitrator and the two chosen arbitrators shall designate a third arbitrator. Schedule "F" sets out the arbitration procedure applicable to any arbitration under this Agreement.
- 6.3 (a) Subject to subsection (c) below, this Agreement may be assignable by the Property Owner upon the prior written consent of AIM, acting reasonably.
- (b) Subject to subsection (c) below, AIM shall be able to assign this Agreement without the prior consent of the Property Owner to any persons, including to its lender(s) as security for AIM's obligations to such lender(s). The Property Owner shall execute and deliver any consent and acknowledgement reasonably requested by such lender.
- (c) No assignment by either AIM or the Property Owner shall be effective unless and until the assignee executes a counterpart of this Agreement (without the need for any other party to execute that counterpart) agreeing to be bound by the terms hereof to the same extent as if it had been an original party hereto.
- 6.4 This Agreement shall be binding upon and enure to the benefit of the Parties hereto, their respective heirs, executors, administrators and other legal representatives and, to the extent permitted hereunder, their respective successors and permitted assigns.
- 6.5 If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision (or part thereof) and everything else in this Agreement shall continue in full force and effect.
- 6.6 No change or modification of this Agreement shall be valid unless it is in writing and signed by each Party hereto.
- 6.7 This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. The Parties hereto acknowledge that there is no representation, warranty, and agreement or understanding between them, whether express

or implied, which has induced any of the Parties hereto to enter into this Agreement except as expressly stated herein.

- 6.8 No failure on the part of any Party to exercise, and no delay by any Party in exercising, any right under this Agreement shall operate as a waiver of such right, unless the Party gives written notice to the other Party of its intention to waive such right.
- 6.9 This Agreement shall commence on the Effective Date.
- 6.10 Time shall be of the essence of this Agreement.
- 6.11 The section headings herein have been inserted for ease of reference only and shall not affect the construction or the interpretation of this Agreement.
- 6.12 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.
- 6.13 Delivery of this Agreement by facsimile transmission shall constitute valid and effective delivery.
- 6.14 Any monies to be paid pursuant to this Agreement shall be in Canadian funds.
- 6.15 **[The Property Owner acknowledges that a Charge/Mortgage of Land is registered on title to the Property Owner's Lands as Instrument No. ● on ● (the "Charge"). The Property Owner covenants and agrees to use its best efforts in obtaining from the mortgagee of such Charge, the necessary postponement agreement, in form and substance satisfactory to AIM, acting reasonably, postponing the mortgagee's interest pursuant to the Charge in favour of the rights and interests of Aim pursuant to this Option Agreement and the Easement to be derived therefrom.]**

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the date first above written.

**AIM POWERGEN CORPORATION**

Per: \_\_\_\_\_

Name:

Title:

(We have the authority to bind the corporation)

Per: \_\_\_\_\_

Name:

Title:

(We have the authority to bind the corporation)

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Witness  
Name:

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**[Insert Property Owner Name]**

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Witness  
Name:

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**[Insert Property Owner Name]**