



CONTRACT STANDARD

Class	Number	Date
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Ontario Power Generation Inc. (“OPG”)

STANDARD COMMERCIAL TERMS FOR SMALL ENGINEERING, PROCUREMENT AND CONSTRUCTION

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1 Interpretation

1.1 Definitions

In this Contract, the following terms have the respective meanings set out below.

- (a) “Anti-Corruption Laws” has the meaning given to it in Section 2.4.
- (b) “Applicable Laws”, in respect of any person, property, transaction or event, means: (1) all applicable laws, statutes, regulations, municipal by-laws and ordinances and treaties, including Environmental Laws, the Nuclear Safety Control Act (Canada), the Export and Import Permits Act (Canada) and the Nuclear Non-proliferation Import and Export Control Regulations (Canada);

(2) any requirements under or prescribed by applicable common law, judgments, orders and decrees; (3) all Codes and Standards, applicable to that person, property, transaction or event at the applicable time and, whether or not having the force of law; and (4) all applicable Approvals.

- (c) “Approvals” means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the Work as may be required by this Contract or by any applicable governmental authorities having or purporting to have authority over the subject matter contemplated herein.

- (d) **“Codes and Standards”** means all requirements, licences, requests, directives, rules, guidelines, standards, specifications, codes, instructions, circulars, manuals and procedures as may be required by this Contract or by any applicable governmental authorities having, or purporting to have, authority over the subject matter contemplated herein.
- (e) **“Contract”** has the meaning given to it in Section 1.3(a).
- (f) **“Contract Price”** means the total sum for the Work (or any portion thereof) as set forth in the purchase order(s), calculated in accordance with the applicable pricing model outlined therein.
- (g) **“Contractor”** means the party contracting with OPG under this Contract.
- (h) **“Contractor Event of Default”** has the meaning given to it in Section 8.
- (i) **“Contractor’s Personnel”** means all personnel used by the Contractor or assisting the Contractor in the provision of the Work, including Professionals and any personnel, staff, labour and other employees of the Contractor or a Subcontractor and any Subcontractor who is an individual.
- (j) **“Environmental Laws”** means any Applicable Laws relating to the protection of the natural environment (including any species that might make use of it) or human health, or the impact, use, storage, transportation or disposal of any hazardous materials.
- (k) **“Good Industry Practice”** means those prudent standards, practices, methods and procedures of design, engineering, procurement, assembly, erection, installation, workmanship, inspection, monitoring and testing (and all other activities of the type included in the Work), and that degree of skill, diligence, prudence and foresight expected from a skilled, experienced, reputable, professional and prudent contractor in North America specializing in the provision of the type of work being performed by the Contractor under this Contract under the same or similar circumstances.
- (l) **“Goods”** means any goods, materials, instruments, devices, articles, supplies, equipment, machinery, structures and assemblies, or components of any of them, delivered or required to be delivered to the Site, to OPG or to such place or person as OPG may direct, under this Contract, and required to be incorporated into the project or provided as consumables or spares.
- (m) **“Intellectual Property Rights”** means any rights, anywhere in the world, in or to a patent, patent application, utility model, inventor’s certificate, invention, copyrighted work, copyright, registration, moral right, industrial design, industrial design registration, industrial design application, trade-mark registration, trade-mark application, unregistered trade-mark, goodwill in any trade-mark, trade name, Internet domain name, service mark, trade secret, know-how, confidential information, mask work or integrated circuit topography, or other intellectual property rights of any kind, whether registered or unregistered.
- (n) **“Lien”** means any:
- (i) lien, charge, attachment, security interest, mortgage, hypothec, claim, deemed trust or other encumbrance, whether fixed or floating, including any lien arising in respect of the *Construction Lien Act* (Ontario);
- (ii) pledge or hypothecation; or
- (iii) deposit arrangement, priority, conditional sale agreement or other title retention agreement, equipment trust, capital lease or other security arrangement of any kind,
- respecting any property, whether real, personal or mixed, tangible or intangible.

- (o) **“Losses”** means all claims, demands, costs, penalties, expenses, liabilities, injuries, losses and damages (including all fees and charges of engineers, architects, accountants, lawyers and other Professionals and experts (in each case on a dollar for dollar full indemnification basis) and all court, arbitration and other dispute, mediation or resolution costs), whether incurred through settlement or otherwise.
- (p) **“OPG Group”** means OPG, each of OPG’s wholly-owned subsidiaries and each of OPG’s and each such subsidiary’s shareholder(s), directors, officers, employees, representatives, agents and advisors, including OPG’s Representative.
- (q) **“OPG’s Representative”** means the individual designated from time to time by OPG to exercise such power, authority or discretion as is required of such person under this Contract.
- (r) **“Professional”** means a licenced professional, including engineers and architects, duly licenced in Ontario, and designated by the Contractor to provide, in whole or in part, any of the Professional Services.
- (s) **“Professional Services”** means all the Work in respect of this Contract, including respecting Submittals provided, or required to be provided, by the Contractor to OPG under this Contract, that is required under this Contract, Applicable Laws or any permits, licences or Approvals to be provided by a Professional.
- (t) **“Site”** means the land or actual place designated by OPG for the performance of the Work.
- (u) **“Subcontractor”** means a person (including the person’s heirs, executors, administrators, personal and legal representatives, successors and permitted assigns) who supplies or performs any of the Work under an agreement with the Contractor, another Subcontractor or a combination of the Contractor and another Subcontractor.

- (v) **“Submittal”** means any document, design, drawing (including as built drawings), plan, information, data or other deliverable whether in physical, electronic or other format, prepared by or for the Contractor which illustrates details of a portion of the Work or is otherwise required by this Contract.
- (w) **“Take-over Date”** means the day on which the Work, having been completed and made ready for use, are provisionally accepted by OPG’s Representative, subject to the Contractor’s continuing obligations under this Contract.
- (x) **“Work”** means providing all labour, Professional Services, supplies, Goods, the Contractor’s equipment, tools and consumables and acts required to be provided by the Contractor under this Contract and the delivery of any Submittals.

1.2 Expanded Definitions

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including without limitation”, and the terms “include”, “includes” and “included” have similar meanings. The term “will” means “shall”. When words that have a well-known technical or trade meaning are used in this Contract, such words will be interpreted in accordance with that meaning. Delivery terms will be as specified in the purchase order. For certainty, all references to the parties acting reasonably or being reasonable will mean acting reasonably or being reasonable in the circumstances, having regard to the requirements of the Work.

1.3 Contract and Order of Precedence

- (a) This **“Contract”** consists of: (i) the purchase order; (ii) these standard commercial terms; and (iii) the other documents delivered to the Contractor in respect of OPG’s request for the supply or performance of the Work.
- (b) These documents take precedence in the order in which they are named above. Schedules, appendices and

addenda referred to in, or forming part of, these documents will be considered part of such document.

- (c) These documents are subject to subsequent amendments which will take precedence over the documents amended thereby. Changes to the scope, price and schedule of the Contract will be made in accordance with Section 4.4. No other amendments to the terms of the Contract may be made except by amendment in writing to these commercial terms.
- (d) No agent, employee or other representative of OPG has authority to make any promise, agreement or representation not incorporated into this Contract, and no promise, agreement or representation will bind OPG unless so incorporated.

1.4 Governing Law

This Contract and the conduct of the parties with respect to the formation and performance of this Contract are governed by and are to be construed and interpreted in accordance with the laws of Ontario and the laws of Canada applicable in Ontario. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario and the Federal Court of Canada. The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to this Contract.

1.5 Language and Units of Measure

All communication between the Contractor or its Subcontractors and OPG, including all documents, notes on drawings, and submissions required under this Contract, will be in the English language. Unless otherwise specified in this Contract, the Contractor will ensure that the International System of Units (SI) will be used for all purposes respecting the Goods and Work.

2 Contractor's Obligations

2.1 Codes of Conduct

The Contractor will:

- (a) not take any action that would cause any member of the OPG Group to breach an obligation set out in OPG's Code of Business Conduct ("**Code**"); and
- (b) comply with all of the obligations set out in OPG's Supplier Code of Business Conduct ("**Supplier Code**").

A current copy of the Code and the Supplier Code is located at www.opg.com, and a copy of each has been reviewed by the Contractor.

2.2 Contractor Labour Obligations

- (a) The Contractor will, at all times, comply with all labour obligations set out in Schedule 2.2, including those set out in the "Labour Requirements" attached to Schedule 2.2.
- (b) Assistance regarding the interpretation of the prevailing labour conditions may be obtained from OPG's Manager - Labour Relations. The Contractor will, at all times, maintain good order and discipline among its workers and will not use in the performance of the Work any unfit person or anyone not skilled in the task assigned to that person.
- (c) Living accommodations for the Contractor's Personnel will not be available on the Site unless specifically provided for under this Contract.

2.3 Permits, Laws and Regulations

- (a) The Contractor will (and will cause each Subcontractor to) comply with:
 - (i) all Applicable Laws and all standards, specifications, manuals or codes of any technical organization or governmental authority; and

- (ii) to the extent not inconsistent with (i), Good Industry Practice, in respect of the Work.
- (b) The Contractor will obtain, at its cost, all permits and other consents required in respect of the Work.

2.4 Anti-Bribery and Corruption

The Contractor will comply with, and will take all reasonable measures to ensure that the Contractor's Personnel or other third parties subject to its control or determining influence will comply with, all applicable anti-corruption laws and policies, including the *Foreign Corrupt Practices Act* (U.S.), the *Corruption of Foreign Public Officials Act* (Canada), the *Bribery Act* (U.K.) and any Applicable Laws of similar effect of any other jurisdiction (collectively, "**Anti-Corruption Laws**"). The Contractor represents, warrants and undertakes that it has instituted and maintains policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance with Anti-Corruption Laws, including policies and procedures designed to ensure that all agents, consultants or other persons employed or acting on the Contractor's behalf or facilitating the conduct of the Contractor's business comply with Anti-Corruption Laws. The Contractor will permit OPG, upon OPG's request to: (i) review its policies and procedures described in this Section 2.4; and (ii) audit all records of the Contractor related to the Goods and Work for the purpose of verifying compliance with the Anti-Corruption Laws.

2.5 Cyber Security

The Contractor will, at all times, conduct the Work in accordance with the cyber security requirements set out in Schedule 2.5 attached hereto.

2.6 ISNetwork

If OPG requires the Contractor to be prequalified through ISNetwork, the Contractor and each Subcontractor will be and remain at all times in good standing with ISNetwork.

2.7 Workplace Safety and Insurance Board

The Contractor will provide its Workplace Safety and Insurance Board account number to OPG before commencing the Work at the Site. The Contractor and each Subcontractor will be and remain at all times in good standing with the Workplace Safety and Insurance Board. Before initial arrival on the Site, and every 90 days thereafter, the Contractor will submit a clearance certificate from the Workplace Safety and Insurance Board as to the Contractor's status and that of all Subcontractors that will be providing Work at the Site.

2.8 Health and Safety

The Contractor will, at all times, conduct the Work in accordance with the health and safety requirements set out in Schedule 2.8 attached hereto.

2.9 Delay

In the event of a delay or default in performance by the Contractor, OPG may, in its sole discretion, extend the time period for performance, upon conditions satisfactory to OPG. Any extension granted by OPG will not prejudice its ability to exercise its termination rights in the event of further delay or default.

2.10 Communications

The Contractor will reference OPG's project name, description of the Work and purchase order number in all communications with OPG.

2.11 Subcontractors and Contractor's Personnel

The Contractor will be fully responsible for all acts and omissions of each Subcontractor and Contractor's Personnel and any such acts and omissions will be deemed to be those of the Contractor. Accordingly, respecting each obligation of the Contractor under this Contract, the Contractor will ensure that no Contractor's Personnel or Subcontractor will breach any such obligation.

2.12 Liens

The Contractor will keep title to the Site and every part of the Site free and clear of all Liens respecting the provision of the Work. The Contractor will immediately notify OPG of any such Lien, claim of Lien or other action of which it has knowledge and which affects the title to any property owned, leased or licenced by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or in part, including the Site. If any Lien is registered against any such property, in whole or in part, including the Site, by a Subcontractor, the Contractor will cause the Lien to be vacated or discharged from title within ten business days of registration. If the Contractor fails to vacate or discharge any such Lien in a timely manner, OPG may vacate or discharge that Lien by paying into court any sum or providing such security as may be necessary to vacate or discharge the Lien. The Contractor will immediately reimburse OPG on demand for all OPG's costs and expenses respecting the vacation or discharge of the Lien, including the amount of the payment into court, the cost of any such security, OPG's legal fees and expenses and a reasonable charge for time spent by OPG personnel.

2.13 Intellectual Property

- (a) Each party and Subcontractor retains all Intellectual Property Rights to methodology, knowledge and data brought to the Work and used therein. No Intellectual Property Rights existing before the start of the Work are passed hereunder other than licences and rights to use Intellectual Property Rights as set out in this Contract.
- (b) All title and beneficial ownership interests to all Intellectual Property Rights which are created or otherwise arise in the provision or performance of the Work, including any Submittals, will vest exclusively in, and remain with, OPG (the "**New Intellectual Property Rights**"). The Contractor hereby assigns and to the extent necessary will cause each Subcontractor to assign, to OPG, all rights, title, and interest in and to the New Intellectual Property Right. This assignment becomes effective in respect of each New Intellectual

Property Right when such New Intellectual Property Right comes into existence, and in any event, no later than on the completion of the Work. The Contractor hereby waives in favor of OPG and any affiliate of OPG, all moral rights and similar non-assignable rights in and related to the New Intellectual Property Rights.

- (c) The Contractor will not do any act which may compromise or diminish the New Intellectual Property Rights, the assignment to OPG of the New Intellectual Property Rights, or the licences referred to in Section 2.13(d) and will perform any acts required to confirm or document the assignment to OPG of the New Intellectual Property Rights, or the licences referred to in Section 2.13(d), including obtaining assignments of rights or waivers of moral rights from any of the Contractor's Personnel or any Subcontractor.
- (d) The Contractor represents and warrants that it owns or has obtained from third parties, duly authorized grants of all right, title and interest necessary to provide to OPG a licence regarding the Intellectual Property Rights associated with the Work in the manner set out in this Contract including waivers of moral rights for the benefit of OPG and OPG's affiliates. In respect of any Intellectual Property Rights not assigned to OPG under Section 2.13(b), the Contractor hereby grants to OPG a worldwide, non-exclusive, irrevocable, perpetual, royalty free and fully paid-up licence and uninterrupted right to use all Intellectual Property Rights that are contained or embedded in, required for the use of, used in the production of, or required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work. The rights granted under this paragraph include a right for OPG to: (i) make copies; (ii) modify and create derivative works from the subject matter of the right; and (iii) assign, sublicense and transfer rights granted under this paragraph, in whole or in part, to any third party. The Contractor will pay all royalties, licence fees and other

monetary amounts required in respect of securing and licensing the Intellectual Property Rights referenced in this Section 2.13(d) and any other Intellectual Property Rights associated with the Work.

- (e) The Contractor will, at its expense, defend all claims, actions or proceedings against OPG relating to or based on any allegation that the Work, or any part of the Work, constitutes an infringement upon, or a misappropriation of any Intellectual Property Rights and will pay to OPG all resulting Losses incurred by OPG in respect of such claims, actions or proceedings. OPG will give the Contractor written notice of any such claim, action or proceeding and, at the request and expense of the Contractor, provide all reasonably available information, assistance and authority required to conduct its defence.
- (f) If all or any part of the Work is finally determined by any court, arbitrator, or administrative body to constitute an infringement or misappropriation of Intellectual Property Rights of a third party, or if OPG is enjoined by any means from using the Work, any part thereof, or any Intellectual Property Rights embodied therein as a result of any claim of infringement or misappropriation, the Contractor will at its expense promptly: (i) obtain for OPG the right to continue using the Work; (ii) replace the allegedly infringing elements of the Work with non-infringing elements, while maintaining the full functionality, integrity and performance capabilities of the Work; or (iii) modify the Work so that it no longer infringes, while maintaining the full functionality, integrity and performance capabilities of the Work.

2.14 Reasonable Objections by OPG

The Contractor will not use, as part of the Contractor's Personnel, any individual against whom OPG has a reasonable objection. The Contractor will promptly remove from the Site any such person whom OPG's Representative does not consider competent or otherwise

considers unsuitable for providing the applicable Work, including for failure to comply with any applicable health or safety obligations or any other obligations under this Contract.

2.15 Confidential Information

- (a) In preparation for, and in the course of, providing the Work, OPG or the Contractor (each, a "**Disclosing Party**") will disclose to the other party (each a "**Receiving Party**") certain information (including applications of that information) which is confidential, a trade secret or otherwise proprietary to the Disclosing Party, including this Contract and the fact that the Contractor is providing the Work (collectively, the "**Confidential Information**"). For certainty, when the Receiving Party is the Contractor, the Contractor will be fully responsible and liable for any disclosure of OPG Confidential Information to or by any of its Subcontractors. Confidential Information does not include, however, information that the Receiving Party is able to demonstrate to the Disclosing Party's satisfaction, acting reasonably: (i) was or becomes generally known to the public through no fault of the Receiving Party or its respective shareholders, directors, officers, partners, members, representatives, agents, advisors or any of the Receiving Party's personnel or any other person for whom the Receiving Party is responsible at law; (ii) was specifically known by the Receiving Party before disclosure by the Disclosing Party and was not subject to any confidentiality obligation; (iii) was developed or ascertained independently without reference to the other party's Confidential Information; or (iv) was received from a third party without such third party being under a duty of confidentiality.

- (b) All Confidential Information remains, at all times, the exclusive property of the respective Disclosing Party. Except as expressly set out in this Contract, a respective Receiving Party has no licence or other right to use or disclose any Confidential Information for any purpose whatsoever. Such Receiving

Party may use Confidential Information only in respect of the preparation for, and the providing of, the Work, including in negotiations with proposed Subcontractors. Such Receiving Party will ensure that none of its or its Subcontractors' current or former shareholders, directors, officers, partners, members, representatives, agents and advisors or any of its personnel or any other person for whom such Receiving Party or any Subcontractor is responsible at law will use any of the Confidential Information for any purposes other than those expressly set out in this Section 2.15.

- (c) At the Disclosing Party's request, the Receiving Party will promptly (and in any event, within ten business days of receipt of such request) return to the Disclosing Party or destroy, at the Disclosing Party's election, any and all Confidential Information belonging to the Disclosing Party, including all reproductions and any documents based on any of the Confidential Information, and will not retain any copies thereof.
- (d) Each Receiving Party acknowledges that each Disclosing Party would not have an adequate remedy at law for monetary damages if the Receiving Party fails to fulfil any of its obligations under this Section 2.15. Accordingly, in addition to any other remedies under this Contract, each Disclosing Party will be entitled to seek equitable relief, including any injunction, specific performance or other remedy in law or equity (without being required to post a bond or other security), in respect of any breach or threatened breach of this Section 2.15 and in which case, each Receiving Party consents to any such injunction, specific performance or other remedy in law or equity.

2.16 FIPPA and OEB Disclosure

- (a) The Contractor acknowledges and agrees that OPG is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time ("**FIPPA**"),

the *Ontario Energy Board Act*, S.O. 1998, c. 15, as amended from time to time, and the Ontario Energy Board Rules of Procedure (collectively, "**FIPPA and OEB Legislation**"). OPG will comply with its obligations under the FIPPA and OEB Legislation. The Contractor is strongly advised to consult its own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in providing the Work.

- (b) Subject to the provisions of FIPPA and OEB Legislation, OPG will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Contractor as confidential but will not be liable in any way whatsoever to the Contractor if such information is disclosed based on an order or decision of the Information and Privacy Commissioner of Ontario, Ontario Energy Board or otherwise as required by Applicable Law.

2.17 Security Check

- (a) OPG may, from time to time, perform a security clearance check, consisting of a criminal record check that may require fingerprints, a reliability check, and an employment and education verification for each of the Contractor's Personnel and, where required for nuclear site access security clearance, a credit check. Upon request by OPG, the Contractor will, at no cost to OPG, submit to OPG's Representative the information required by OPG for each of the OPG identified Contractor's Personnel. The information that OPG requires, such as photographic identification, birth certificate and citizenship card, may vary from individual to individual, depending on the individual's background and circumstances. OPG may require, prior to starting work with OPG that the Contractor's Personnel complete OPG forms for security clearance, including a five year, or more, residence and work history. If any of the Contractor's Personnel have resided or worked in, or travelled to a country other than

Canada, for more than six months cumulative, they may be required to supply criminal record name checks from each country to which that applies. OPG may require that such Contractor's Personnel provide further information, including references or education credentials. OPG may require any supporting documentation to be verified in a manner established by OPG, including by notarizing. If OPG determines that any of the Contractor's Personnel is unsuitable for any reason, or if OPG is not satisfied with the timeliness, accuracy, validity, adequacy or completeness of any of the information received by OPG, then the Contractor will ensure that the applicable Contractor's Personnel is replaced immediately, at no cost to OPG. OPG will maintain all the information submitted to OPG under this Section 2.16 in accordance with Applicable Laws.

- (b) OPG's security staff will have the right to examine or search, materials, supplies, Goods and the Contractor's equipment brought to or removed from the Site by the Contractor or by any Subcontractor. If requested, the Contractor will (and will cause each Subcontractor to) deposit with the security officer an itemized list of all materials, supplies, Goods and the Contractor's equipment at the time they are brought to the Site. The list will be used by the security staff when checking such materials, supplies, Goods and the Contractor's equipment into and out of the Site at any security gate.
- (c) OPG's security staff will also have the right to examine or search at any time, in the presence of the Contractor's or the Subcontractor's representative, any Contractor or Subcontractor enclosure on the Site, including the Contractor's and Subcontractor's equipment.
- (d) OPG will not accept any claims for, nor is OPG liable in respect of, items deemed damaged or stolen during the course of the Work.

2.18 Submittals

Unless otherwise specified in this Contract, the following provisions will apply:

- (a) The Contractor will submit electronically, or otherwise as directed by OPG, each Submittal to OPG in a timely manner and orderly sequence, so as not to cause any delay in the Work.
- (b) Any part of the Work to be performed in accordance with any Submittal, whether prepared by the Contractor or OPG, will not be commenced until such Submittals have been accepted in writing by OPG's Representative. Acceptance by OPG's Representative of the Contractor's Submittals will in no way be construed to imply relief of the Contractor from responsibility for any errors or omissions contained therein or relief from any of its obligations or liabilities under this Contract or otherwise.
- (c) Unless otherwise directed by OPG's Representative, the Contractor will promptly correct all items in Submittals, whether or not raised by OPG's Representative, which do not conform to the requirements of this Contract. The Contractor will then return to OPG's Representative the revised Submittals clearly identifying any revisions. The Contractor will be responsible for recovering any time lost in the review process by reason of any error or defect in the Submittals.
- (d) In case of conflict between the specifications and the Submittals, the specifications will govern.
- (e) All of the Submittals prepared by the Contractor under this Contract will be prepared in accordance with OPG's drawing standards, copies of which are available upon request. For the purposes of ready identification, the Contractor will ensure that each Submittal will show the OPG project name.
- (f) Drawings and data belonging to OPG are Confidential Information as per Section 2.15 of this Contract.

- (g) All manuals will be in sufficient detail for OPG to operate, maintain, commission, refurbish, replace, alter, relocate, decommission, dismantle and demolish, as applicable, the Work.

2.19 Contractor's Property

- (a) The Contractor will be solely responsible for the care, custody and control of the Contractor's property when providing the Work at the Site.
- (b) OPG assumes no responsibility or liability for the Contractor's property.
- (c) The Contractor will provide adequate Contractor's equipment to perform the Work in accordance with the approved construction schedule. The Contractor will regularly inspect the Contractor's equipment and maintain same in good working order. The Contractor will be required to complete OPG's Safety Certification form each time a machine is brought on to a Site and at intervals as required by OPG's Representative.
- (d) The Contractor will confine its materials, supplies, Goods and the Contractor's equipment to the Site and to such location(s) as are designated by OPG's Representative. The Contractor will ensure that temporary structures of the Contractor and its Subcontractors do not interfere with the work of other companies or of OPG, and are removed as soon as no longer needed.

2.20 Environment

The Contractor will, at all times, conduct the Work in accordance with the environmental requirements set out in Schedule 2.20 attached hereto.

2.21 Hazardous Materials

The Contractor when shipping to any OPG Site any product which is categorized as a hazardous material (i.e., compressed gas, flammable or combustible material, oxidising material, poisonous and infectious material, corrosive material or dangerously reactive material) will comply with relevant federal and

provincial legislation and regulations pertaining to such materials. The Workplace Hazardous Material Information System ("WHMIS") will apply and all such materials will be properly identified with WHMIS type warning labels. All shipments of such material to OPG Sites will include either a Material Safety Data Sheet ("MSDS") or a Safety Data Sheet ("SDS"). Where the delivery point is a nuclear site, a copy of the MSDS or SDS will also be sent by mail to the attention of the MSDS Centre, OPG Safety Department, at 1600 Champlain Ave, Whitby, Ontario, L1N 9B2 and by email to hazmat@opg.com.

2.22 Site Physical and Labour Conditions

The Contractor expressly waives all claims attributable to errors and/or omissions in the information, representations or estimates by OPG or anyone acting on its behalf, whenever or however made, relative to the physical condition of the Site, the labour conditions affecting the Work, the quantities of Work to be performed or the scheduling of the Work.

2.23 Site Performance/Other Contractors

- (a) The Contractor will adhere strictly to the schedules specified in this Contract and will plan the Work so that labour and materials are available at the Site in order to permit the Work to progress in an orderly manner.
- (b) OPG's Representative is responsible for the general progress, scheduling, co-ordinating and administration of the services of all other contractors on the Site. The Contractor will co-ordinate the Work with that of other contractors and make such connections as are specified or shown in this Contract.
- (c) The Contractor will notify OPG's Representative of any apparent deficiencies in work performed by OPG or third parties that would affect the Work under this Contract. Such notification will be communicated immediately and confirmed in writing. If the Contractor fails to so report such deficiencies, any prejudice to OPG in connection with such delay will be taken into account in determining the Contractor's entitlement to any claim

against OPG respecting such deficiencies.

- (d) Insofar as is consistent with the nature of the Work and subject to the terms of this Contract, the order and methods of performance of the Work will be left to the discretion of the Contractor.
- (e) OPG's Representative will have the right to control the order and methods of performance of the Work at the Site. Should OPG's Representative be of the opinion, and so inform the Contractor in writing, that the amount of labour, materials, supplies, Goods, the Contractor's equipment or other items dedicated to the Work is insufficient, or that the methods employed are not such as will ensure the completion of the Work on schedule, then the Contractor will, forthwith, increase the amount of labour, materials, supplies, Goods, the Contractor's equipment or other items, as the case may be, or will adopt other methods and practices, all to the satisfaction of OPG's Representative and at no extra cost to OPG.

2.24 Foreign Nationals

The Contractor will obtain at its cost all Approvals from all applicable governmental authorities respecting all foreign nationals who may be engaged in providing the Work in Canada.

2.25 Canadian Social Insurance Number Requirement

It is a requirement of the Canadian Nuclear Safety Commission's radiation protection regulations that all workers must have a Canadian Social Insurance Number (SIN) before commencing Work at a nuclear facility. This is to enable OPG to report the worker's radiation dose to the national dose registry.

2.26 Procurement of Goods

The Contractor will be responsible for manufacturing, supplying or procuring, factory testing, packing, transporting, delivering, storing, inspecting, receiving and installing all Goods and providing all Work reasonably required in respect of the foregoing. The Contractor will

conduct all these activities in accordance with this Contract. If required by OPG, the Contractor will provide satisfactory evidence (including reports of required inspections, tests and Approvals) as to the kind and quality of all Goods. The Contractor will ensure that all Goods will be constructed, applied, assembled, erected, installed, used, connected, adjusted, field tested, conditioned, cleaned, commissioned and cleaned up in accordance with instructions of the applicable manufacturer and Good Industry Practice, except to the extent as may otherwise be provided in this Contract.

2.27 Delivery of Counterfeit, Fraudulent and Suspect Items

The Contractor will (and will cause its Subcontractors to) not use or deliver counterfeit, fraudulent and/or suspect Goods ("CFSI") while providing Goods or Work to OPG. If any Goods under this Contract are described using a manufacturer part number, a product description and/or specified using an industry standard, the Contractor will ensure that the replacement Goods supplied under this Contract meet all requirements of the latest version of the applicable manufacturer data sheet, description and/or industry standard. If the Contractor is not the manufacturer of the Goods, the Contractor will ensure that the Goods supplied under this Contract or used to manufacture the equipment under this Contract are made by the original equipment manufacturer in compliance with the applicable manufacturer data sheet and/or industry standard. If the Contractor desires to supply or use any Goods that may not meet the requirements of this Section 2.27, the Contractor will notify OPG of any exceptions and receive OPG's written approval prior to shipment or use of such Goods. If CFSI are furnished under this Contract or are found to have been used in connection with any of the Work provided under this Contract, such Goods will be dispositioned by OPG and may be returned to the Contractor. The Contractor will promptly replace such CFSI with Goods acceptable to OPG and the Contractor will be liable for all costs, including OPG's internal and external costs relating to the removal and replacement of such Goods.

2.28 Quality Assurance

The Contractor will implement and maintain an auditable (by OPG or its designees) quality assurance program in accordance with its own

internal program, Good Industry Practice and the requirements, if any, set out in this Contract. If there are any conflicts between the Contractor's internal program, Good Industry Practice and the requirements of this Contract, the requirements of this Contract will prevail, followed by the requirements of Good Industry Practice. Compliance with these quality assurance requirements will not relieve the Contractor from any of its obligations or liabilities under this Contract. The Contractor will ensure that all of the Work and Goods are provided in accordance with the applicable quality assurance program. If the Contractor identifies anything in the Work or Goods which does not conform to the quality assurance program, the Contractor will promptly correct such non-conformance.

2.29 Inspections, Tests & Approvals

If this Contract, the applicable quality assurance program, Good Industry Practice or any Applicable Laws or permits, licences or Approvals require any part of the Work or the Goods to be inspected, tested or approved, in whole or in part, the Contractor will arrange for and obtain all such inspections, tests and Approvals. The Contractor will ensure that each inspection, test or approval that is required to be carried out, in whole or in part, by a Professional, is so carried out by a Professional. The Contractor will deliver to OPG all certificates, reports and other documents respecting any inspections, tests and Approvals.

3 Indemnity and Insurance

3.1 Risk of Loss

The Work and Goods will remain at the sole risk of the Contractor against loss or damage: (i) up to and including the Take-over Date; and (ii) after the Take-over Date to the extent such Work or Goods are in the control of the Contractor or any of its Subcontractors.

3.2 Contractor Indemnity

The Contractor will indemnify and hold harmless each member of the OPG Group, from and against:

- (a) all Losses suffered or incurred by a member of the OPG Group arising in respect of the Work, to the extent that

any such Losses are attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property, including any resulting loss of use thereof; and

- (b) all claims made against any member of the OPG Group by any person,

but only, in the case of Sections 3.2(a) and 3.2(b), to the extent such Losses or claims are attributable to a breach of this Contract by the Contractor or any negligent act, negligent omission, fraud or willful misconduct of the Contractor, Subcontractor or any of the Contractor's Personnel,

- (c) all Losses suffered or incurred by a member of the OPG Group and all claims made against any member of the OPG Group by any person in respect of any Liens registered by a Subcontractor against any property owned, leased or licenced by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or in part, including the Site;

- (d) all Losses suffered or incurred by a member of the OPG Group and all claims made against any member of the OPG Group by any person, to the extent arising in respect of a breach or threatened breach by the Contractor, any Subcontractor or any of the Contractor's Personnel of Section 2.15; and

- (e) all Losses suffered or incurred by a member of the OPG Group and all claims made against any member of the OPG Group by any person to the extent arising in respect of any breach or threatened breach by the Contractor, Subcontractor or any of the Contractor's Personnel of Section 2.13.

in each case save to the extent such Losses or claims are caused or contributed to by a breach of this Contract by OPG or any negligent act, negligent omission, fraud or willful misconduct of OPG or any member of the OPG Group. Other than the foregoing, the obligations of the Contractor under this Section 3.2 will not be affected in any way by any certificate, acceptance, approval, payment or any other act,

matter or thing done or omitted under this Contract, including any act by OPG or OPG's Representative.

3.3 Insurance

The Contractor will maintain at its own expense, at all times during the term and any extension of this Contract, the following insurance with reputable insurers whose policies are valid in the jurisdiction in which the Work are performed:

- (a) commercial general liability insurance on an occurrence basis, including contractual liability, products liability and completed operations liability, with minimum limits of not less than \$10,000,000 per occurrence, covering bodily and personal injury, including death, and property damage, including resulting loss of use. Such policy will contain severability of interests and cross liability clauses and will name OPG as an additional insured with respect only to liability arising from the operations of the Contractor;
- (b) "all-risks" property insurance upon property of every description and kind owned by the Contractor, or for which the Contractor is legally liable, brought onto the Site or incorporated into the Work, in an amount not less than the full replacement cost thereof. Such insurance will contain a waiver of subrogation in favour of OPG; and
- (c) automobile liability insurance covering all owned and non-owned vehicles used in the performance of this Contract, or brought onto the Site, with a limit of not less than \$1,000,000.

If not already available in ISNetwork, upon execution of this Contract, and upon OPG's reasonable request thereafter, the Contractor will provide OPG with evidence of the required insurance in the form of certificates of insurance which will be sent to the contact person specified in the applicable purchase order. The Contractor will ensure that all such policies will require that insurers endeavor to provide OPG with 30 days prior written notice of material change to or termination of any such policy.

4 Terms of Payment

4.1 Payment

- (a) Subject to applicable legislation and this Contract, payment will be made as follows:
 - (i) in monthly instalments of 90% of all labour and materials incorporated into the Work, less the sum of all previous payments; and
 - (ii) any unpaid balance, submitted after the Take-over Date.
- (b) OPG will aggregate all outstanding invoices received and approved by OPG for payment before the 25th day of each month. Subject to any withholdings required by law, statute or regulation, OPG will pay the Contractor this aggregate amount on the 25th day of the following month or following business day if the 25th day falls on a non-business day of the following month. All payments are conditional, however, on the Contractor fulfilling its obligations and making satisfactory progress in providing the Work before the date payment is made. OPG will exclusively determine whether or not such obligations have been fulfilled and progress is satisfactory.
- (c) Notwithstanding Section 4.1(b), no invoice will be required to be paid if it is not submitted to OPG within 90 days of the performance of the Work to which the invoice relates.
- (d) The Contractor acknowledges that OPG has implemented an electronic invoicing system such as ARIBA or other similar system as OPG may designate (the "EIS") and the timely payment of amounts owing to the Contractor requires that the Contractor provide invoicing information in accordance with this system. The Contractor will set up the preliminary invoicing information on the EIS promptly following the date of this Contract. The Contractor will be responsible for maintaining access to the internet, and for the accuracy and

timeliness of the data entered into the EIS. OPG will not be responsible for any delays to payments as a result of the Contractor's errors and omissions arising from the misuse of the EIS. The parties agree to work co-operatively to minimize each other's costs associated with the implementation and ongoing access and use of the EIS. The Contractor is aware and accepts that OPG will review, accept and approve of the Contractor's data submitted via the EIS prior to any issuance of payment. Nothing in this Section 4.1(d) diminishes or amends OPG's rights set out in the remainder of this Contract. If the Contractor is located in Canada, OPG will make all payments by electronic funds transfer. The Contractor will deliver to OPG suitable electronic funds transfer instructions from time to time.

- (e) Acceptance by the Contractor of the final payment will constitute a waiver of all claims by the Contractor against OPG except those previously made in writing in accordance with this Contract and still unsettled.
- (f) Payments to the Contractor, including final payment, will not relieve the Contractor from any of its obligations or liabilities under this Contract or otherwise.
- (g) Unless otherwise provided in the purchase order, OPG may withhold 10% from each payment as a holdback, or such greater amount as may be required, to satisfy OPG's obligation under the *Construction Lien Act* (Ontario). OPG will only pay to the Contractor, to the extent that such amount has not otherwise been paid to another person under this Contract, the total accumulated 10% holdback on the expiration of the holdback retention period, as set out in the *Construction Lien Act* (Ontario). Under no circumstance, however, will OPG be obliged to release any such holdback, in whole or in part, that OPG retains in accordance with the *Construction Lien Act* (Ontario), on any date that is earlier than the period during which the

holdback must be retained under the *Construction Lien Act* (Ontario) expires.

- (h) For the use of Subcontractors and others that may register construction Liens, the Contractor will include in all subcontracts OPG's complete address.

4.2 Taxes

- (a) Canadian Goods and Services Tax ("GST") / Harmonized Sales Tax ("HST"), if applicable, will be shown as extra and the Contractor's invoice will identify its 15 digit registration number for purposes of Part IX of the *Excise Tax Act* (Canada). The Contractor will deduct all recoverable GST or any HST paid or payable before adding GST or any HST to amounts to be invoiced to OPG.
- (b) OPG will have no liability for any of the Contractor's income or capital taxes imposed by any governmental authority respecting the Contract. Unless otherwise stated in this Section 4.2, OPG will have no liability for any withholding, collection, payment, remitting or reporting of any taxes or statutory deductions paid or payable by the Contractor or any Subcontractor in respect of any Subcontractor or any employee of the Contractor or of any Subcontractor.
- (c) Notwithstanding any term in this Contract, OPG may withhold any amount that is required to be withheld on payments made to non-residents of Canada in accordance with the *Income Tax Act* (Canada) and regulations thereto. OPG will have no obligation to gross up or otherwise increase payments made to the Contractor or any Subcontractor because OPG withheld any amount in respect of taxes. Where OPG so withholds any amount, OPG will remit such amount to the applicable Canadian tax authorities.
- (d) Where the non-resident invoices OPG for Work provided both in and outside Canada, the invoice must separately identify the value of the Work rendered in Canada. If this is not done, OPG will

apply the applicable withholding tax on the entire amount of the invoice.

- (e) Under no circumstances will OPG make any tax equalization payments of any kind.

4.3 Contract Price

- (a) Unless otherwise indicated in this Contract: (i) all monetary amounts are stated in Canadian funds; (ii) the Contract Price includes all activities required to supply or perform the Work and all applicable customs duties, excise taxes, freight, insurance, and all other charges of every kind respecting the Work except for GST or any HST; and (iii) the Contract Price will not be subject to adjustments for changes in any cost of the Work to the Contractor.
- (b) Notwithstanding anything to the contrary in this Contract, if established in the purchase order, OPG will reimburse the Contractor for expenses as provided in OPG's Business Expense Schedule referred to in the purchase order. Where a Contractor that is registered for GST/HST invoices for Work and for expenses incurred in the performance of the Work, GST/HST will apply to both the Work and expenses.

4.4 Changes in the Work

OPG may, without invalidating this Contract, direct the Contractor in writing to make changes in the Work, in the form of change order attached hereto as Schedule 4.4. When a change causes an increase or decrease in the cost, scope or schedule of the Work, the Contract Price will be increased or decreased by the application of unit prices to the quantum of such increase or decrease or, in the absence of applicable unit prices, by an amount to be agreed upon between the Contractor and OPG's Representative.

5 Force Majeure

- (a) Neither the Contractor nor OPG will be liable to the other for loss, damage or delay in the Work, or non-performance of any contractual obligation caused by war, riot, the act or order of any

competent civil or military authority, fire, flood or by any other cause which is unavoidable and beyond the party's reasonable control. Both parties will be prompt in restoring normal conditions, re-establishing schedules and resuming operations as soon as the interruptions have ceased.

- (b) The Contractor will not be entitled to an extension of time for any delay covered by the above paragraph unless notice of a claim thereof is given by the Contractor within 30 days after the commencement of the delay. The length of any such extension will be determined by OPG's Representative.
- (c) Damage, loss, expense or delay incurred by the Contractor in the performance of the Work by reason of unforeseen circumstances, unanticipated difficulties and obstructions, bad weather, or other mischances that are generally considered to be part of the usual hazards associated with construction work, will be borne by the Contractor and will not be the subject of a claim for additional compensation or schedule delay.

6 Liability

6.1 Limitation of Liability

Subject to Section 6.2, the liability of either party respecting all claims arising in respect of this Contract will not exceed an aggregate amount equal to the Contract Price.

6.2 Exclusions

The Contractor's limitation of liability set out in Section 6.1 will not apply to:

- (a) the Contractor's obligations (or a breach thereof) under Sections 2.13 and 2.15;
- (b) the Contractor's indemnity obligations under Section 3.2 with respect to third party claims;
- (c) amounts recovered from insurance under this Contract, with the Contractor

acting diligently in pursuit of recovery from its insurers of indemnifiable claims arising under the Contract, (or that would have been recovered had the Contractor complied with its obligations under Section 3.3) to the extent of the limits specified in Section 3.3; and

- (d) Losses suffered or incurred by a member of the OPG Group or any claims made against any member of the OPG Group by any person, to the extent arising in respect of fraud, gross negligence, or willful misconduct by the Contractor or any of its Subcontractors.

6.3 Consequential Damages

Notwithstanding any other term in this Contract, except in respect of the matters set out in Section 6.2, in no circumstances whatsoever will either party be liable to the other party for indirect, incidental or for consequential liabilities, damages, Losses, costs or expenses, including loss of profit or revenues, loss of production, loss of use or any other similar damages or loss suffered or incurred by such other party, regardless of the legal theory upon which any such damages claim is based, even upon the fault, tort (including negligence), statute, regulation, or any other theory of law or strict liability.

7 Warranty

7.1 Basic Warranty

The Contractor warrants and guarantees to OPG that, for one year following the delivery of the Work or Goods, notwithstanding anything else in this Contract, the Work will in all respects be fit for the purposes intended by this Contract and not defective, and the Goods will be fit for the purposes intended by this Contract, not defective, and free from all Liens.

7.2 Manufacturer Warranty

The Contractor confirms that it is duly authorized by the manufacturer of the Goods to distribute the Goods and that OPG will be entitled to the full benefit of all warranties, customer service, maintenance and repair programs offered by the manufacturer. Unless otherwise stated in this Contract, all Goods supplied will be the most current model or version commercially available

at the time of supply, will be new and comprised entirely of genuine unused components in good operating condition and will be fully eligible for maintenance service without any requirement for further qualification or inspection.

7.3 Defects

If, within one year of the Take-over Date, any part of the Work becomes defective, is deficient or fails due to defect in workmanship, construction or materials (other than supplied by OPG) or otherwise fails to meet the requirements of this Contract, then the Contractor, upon receipt of notification from OPG's Representative, will make good every such defect, deficiency or failure within the period of time specified by OPG's Representative and without cost to OPG.

7.4 Cost to Correct

The Contractor will pay all costs respecting the correction of a defective part, deficiency or failure of the Work. Such costs to correct will not exceed the total amount of Contract Price.

7.5 Delay or Default in Correction

If the Contractor, after notification of a defect, deficiency or failure, delays or defaults in proceeding to correct the defect or deficiency, then OPG's Representative may arrange to remedy the defect or deficiency and the Contractor will be liable for all costs, charges and expenses incurred in connection therewith, all without prejudice to all other rights or remedies OPG may have for breach of contract.

7.6 Extension of Warranty Period

Any part of the Work made good under this Section 7 will be subject to all the provisions hereof for a period of one year from the date the same was made good.

7.7 Exclusions

The warranties and guarantees in this Section 7 do not apply to the extent that any breach of the warranty or guarantee is due to the effects of reasonable wear and tear under normal usage by OPG.

7.8 Sole Remedy for Correction of Defect

If at any time and from time to time following the Take-over Date, any part of the Work are found to be defective, the sole liability of the Contractor and the exclusive remedy of OPG with respect to the correction of such defective or deficient part, will be limited to the warranty remedies set out in this Section 7, provided that nothing in this Section 7 will serve to limit the Contractor's liabilities or OPG's remedies otherwise provided for under this Contract that do not pertain to the correction of such defective and deficient part.

8 Default by the Contractor

(a) Each of the following events and circumstances constitutes an event of default by the Contractor (a "**Contractor Event of Default**") under this Contract:

- (i) becoming subject to any act of insolvency or bankruptcy, dissolution or liquidation voluntary or otherwise;
- (ii) having a receiver, trustee, custodian or similar agent appointed on account of insolvency or in respect of any property;
- (iii) making a general assignment for the benefit of creditors;
- (iv) committing a breach of Anti-Corruption Laws;
- (v) failing to comply with any request, instruction or order of OPG's Representative;
- (vi) failing to pay accounts relating to the Work as they come due;
- (vii) failing to comply with statutes, laws, regulations, bylaws or directives of competent authorities relating to the Work;
- (viii) failing to perform the Work with skill and diligence;
- (ix) any representation made by the Contractor herein that was

intentionally false or misleading when made in any material respect;

- (x) assigning or attempting to assign this Contract, in whole or in part, except in a manner expressly permitted in Section 10.2;
 - (xi) failing, neglecting, refusing or being unable at any time during the term to provide reasonably adequate Contractor's Personnel to perform the Work;
 - (xii) a change of ownership or control of the Contractor occurs without the prior written consent of OPG;
 - (xiii) failing or refusing to correct defective or deficient Work; or
 - (xiv) being otherwise in default in carrying out any of its obligations under this Contract, whether such default is similar or dissimilar in nature to the causes listed previously and failing to remedy the breach to the satisfaction of OPG within ten business days following receipt of notice from OPG specifying the breach, or if the breach cannot be cured within such ten business day period, after such longer period of time as is reasonably required to cure the breach (but no longer than 60 days in any circumstances), so long as the Contractor diligently and constantly endeavours to cure the breach during such extended period.
- (b) Notice that the Contractor is in default will not be required if the default relates to the bankruptcy, insolvency or financial instability of the Contractor. Other than defaults arising from Sections 8(a)(i), 8(a)(ii) and 8(a)(iii), OPG will provide the Contractor with ten days' written notice.

(c) If the Contractor is in default under this Contract, then in addition to or as an alternative to terminating this Contract, OPG may:

- (i) take possession of all of the Work in progress, material, supplies, Goods and the Contractor's equipment then at the Site (at no additional charge for the retention or use of the materials, supplies, Goods and the Contractor's equipment);
- (ii) eject and exclude from the Site the Contractor, any Subcontractors and any of the Contractor's Personnel;
- (iii) suspend, in whole or in part, the Contractor's provision of Work under this Contract;
- (iv) finish the Work by whatever means it may deem appropriate under the circumstances (and the Contractor, at no additional charge to OPG, will promptly, and in any event within three business days, provide OPG with all such records and work in progress that are not located on the Site and that are requested by OPG in writing);
- (v) incorporate or use in the project any or all Goods stored at the Site or for which OPG has paid the Contractor but which are stored elsewhere; and/or
- (vi) withhold, without interest, all payments, in whole or in part, to the Contractor under any agreement between OPG and the Contractor until the Contractor's liability to OPG is determined.

Unless OPG otherwise directs, the Contractor will cooperate with the exercise of OPG's recourse under this Section 8, including by, if directed by OPG, (i) discontinuing the Work, (ii) ceasing to place orders for Goods, (iii) making every effort to cancel

existing orders on terms satisfactory to OPG, (iv) protecting the Contractor's property and Goods, (v) minimizing costs associated with such termination or cancellation, (vi) assembling all Submittals and records as may be requested by OPG in an orderly fashion; and (vii) allowing OPG's other contractors access to the Site to enable OPG to exercise its rights under this Section 8.

- (d) Any action by OPG under this Section 8 will be without prejudice to OPG's other rights or remedies under this Contract or law or under any security held by OPG for performance of this Contract by the Contractor.

9 Suspension and Termination

9.1 Suspension

- (a) OPG may at any time from time to time, for any reason without affecting the validity of this Contract, suspend the Work, in whole or in part, for such period of time as OPG may notify the Contractor.
- (b) Immediately following a notice of resumption delivered by OPG to the Contractor, the Contractor will resume providing the Work. In the event that a suspension pursuant to this Section 9 exceeds 12 months in duration, then unless otherwise agreed to by the parties, this Contract will be deemed to have been terminated by OPG pursuant to Section 9.3 and the provisions of Section 9.3 will apply to such termination.

9.2 Termination for Cause

- (a) OPG may terminate this Contract immediately and without any cost to OPG by delivering a notice to the Contractor on the occurrence of a Contractor Event of Default.
- (b) If OPG terminates this Contract under Section 9.2(a) or exercises its rights under Section 8(c), the Contractor will be liable to OPG for:

- (i) the extra expense of finishing or replacing the Work, including compensation to OPG for additional engineering, managerial and administrative services;
 - (ii) the cost of correcting defects (if any) in that portion of the Work performed by the Contractor;
 - (iii) all other loss, damage and expense occasioned to OPG by reason of the Contractor's default; and
 - (iv) applicable sales taxes.
- (c) If any time after OPG terminates this Contract under Section 9.2(a), it is determined for any reason that a Contractor Event of Default had not occurred, the rights and obligations of the parties will be the same as if the termination of this Contract by OPG had occurred under Section 9.3.

9.3 Termination for Convenience

- (a) OPG may from time to time, without cause and without affecting the validity of this Contract, immediately terminate any uncompleted or unperformed Work, in whole or in part, by delivering a notice to this effect to the Contractor. The parties hereby acknowledge and agree that in the event OPG terminates this Contract in accordance with its terms, the Contractor will:
- (i) reimburse OPG forthwith for any portion of the Contract Price paid to the Contractor for Work not yet provided up to and including the date of termination of this Contract; and
 - (ii) be deemed to have waived its right to receive the balance of the Contract Price that it has not yet received as of the date of termination of this Contract (other than for Work performed in accordance with this Contract up to the date of termination of this Contract).

(b) Except to the extent any such termination arises in respect of any Contractor Event of Default or any fraud, negligent or wilful act or omission of the Contractor or a Subcontractor, OPG will pay the Contractor the amounts set out below, supported by any audit requested by OPG (including an audit performed by members of OPG's internal audit staff):

- (i) reimbursement at the Contract Price for all items completed and delivered;
- (ii) reimbursement for the direct out-of-pocket costs to the Contractor for Work in progress directly incurred in the course of the Work (for greater certainty, there will be no charge for items which are not custom manufactured for this Contract); and
- (iii) reimbursement for the direct out-of-pocket costs directly caused by the termination, unless the Goods under this Contract is limited to parts, in which case, OPG will pay the Contractor a percentage of the value of the item as a restocking charge for standard stocked items. Before OPG pays the Contractor for such extra direct damages, the Contractor will provide to OPG such reasonable evidence of such damages as OPG may request.

(c) Title to all Work for which reimbursement is made will vest in OPG. OPG will not be liable to the Contractor for loss of anticipated profit or any other economic loss whatsoever on the terminated portion or portions of the Work.

9.4 Orderly Transition

On any termination of this Contract under Section 9, the Contractor will co-operate with OPG to ensure an orderly transition of the provision of all Work to OPG or to such party as OPG may direct so as to ensure that any

disruptions to the project caused by the termination are minimized.

10 General

10.1 Dispute Resolution

All disputes, disagreements, controversies, questions or claims arising out of or relating to this Contract, or in respect of any legal relationship associated with or arising from this Contract, including with respect to this Contract's formation, execution, validity, application, interpretation, performance, breach, termination or enforcement, will be determined by litigation in the Superior Court of Justice of Ontario at Toronto, to the jurisdiction of which the parties irrevocably attorn.

10.2 Assignment

- (a) This Contract enures to the benefit of and binds the parties and their respective successors and permitted assigns.
- (b) Except as expressly set out in this Contract, the Contractor may not, in whole or in part, assign, licence, sublicense, subcontract, delegate or otherwise transfer this Contract or any right or obligation under this Contract.
- (c) OPG may assign any of its rights and transfer any of its obligations respecting this Contract: (i) to any present or future affiliated or subsidiary enterprise of OPG; or (ii) to a third party in the course of any sale, lease, merger, amalgamation, reorganization or other form of corporate, commercial or financial arrangement. Upon, and to the extent of such transfer, OPG will be entirely relieved of all such obligations so transferred. OPG may disclose to an assignee or a proposed assignee any information and documentation respecting this Contract.

10.3 Notices

Notices to OPG and the Contractor will be sent to the contact person specified in the applicable purchase order. Notices required or permitted under this Contract will be in writing and may be

delivered in person, by courier or by email to the applicable party. Such notices will be effective upon receipt.

10.4 Publicity

The Contractor will (and will cause each Subcontractor to) not release for publication any information in respect of this Contract without the prior written consent of OPG.

10.5 Former OPG Employees

The Contractor acknowledges that OPG's policies restrict the involvement of certain individuals in OPG contracts. The Contractor will disclose in writing to OPG the names of individuals who the Contractor intends to use to perform the Work under this Contract and who were formerly employed by OPG. OPG will, subject to any restrictions imposed by Applicable Laws, determine whether there are any restrictions related to hiring such individuals and notify the Contractor of any restrictions within a reasonable period of time. The Contractor will not, and will not permit any Subcontractor to, use any former OPG employee to perform the Work under this Contract without the prior written consent of OPG.

10.6 Waivers

No waiver of any term of this Contract is binding unless it is in writing and signed by all the parties entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy, under this Contract will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Contract will be deemed to be a waiver of any subsequent breach of that term.

10.7 Survival

The provisions of this Contract that by their sense and context are intended to survive the performance hereof will so survive the completion of performance or termination or expiry of this Contract.

10.8 Choice of Language

The parties confirm that it is their wish that this Contract, as well as any other documents respecting this Contract, including notices,

schedules and authorizations, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tous avis, cédules et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

SCHEDULE 2.2

LABOUR OBLIGATIONS

The "Labour Requirements" (attached hereto as Attachment 2.2), all attachments thereto and all information incorporated by reference therein or linked thereto collectively form part of this Schedule 2.2. The Contractor will execute and deliver an Acknowledgement of Labour Requirements in the form attached as Attachment 2.2 prior to the commencement of any Work. The Contractor will advise all Subcontractors of these requirements and the Contractor will deliver to OPG's Representative a written acknowledgement from each Subcontractor before that Subcontractor commences to provide any Work.

ATTACHMENT 2.2

CONTRACTOR LABOUR REQUIREMENTS

See attached the following documents:

1. Acknowledgement of Labour Requirements;
2. Information Sheet for Labour Requirements Clause Form 1
3. OPG Matrix (Non EPSCA);
4. EPSCA Matrix;
5. Labour Requirements Clause Form 1;
6. Schedules I, II and III to Labour Requirements Clause Form 1;
7. Notice to Proponents;
8. Notice to Proponents – Fabrication Clauses;
9. Notice to Proponents – Electrical Trades Work Requirements for OPG Nuclear sites;
10. Landlord's Statements;
11. Notice to Proponents – Crane Rentals; and
12. Notice to Proponents – Non-Destructive Testing.

The following are incorporated by reference:

1. EPSCA Contributions Report (go to: www.epasca.org/epscaforms.aspx);
2. EPSCA Contractor - Subcontractor Aug. 2009 (go to: www.epasca.org/epscaforms.aspx);
3. EPSCA Collective Agreements and Wage Schedules (go to: www.epasca.org/);
4. CUSW Collective Agreement and Wage Schedules (go to: www.opg.com/customers/labour.asp);
and
5. BACU Collective Agreement and Wage Schedules (go to: www.opg.com/customers/labour.asp).



ACKNOWLEDGEMENT OF LABOUR REQUIREMENTS

[Insert Full Legal Name of the Contractor] (the “**Contractor**”) acknowledges and agrees that if the Contractor enters into a Contract with Ontario Power Generation Inc. (“**OPG**”) respecting the project which is the subject matter to which this form relates (the “**Contract**”):

- (a) the Contract will include all the terms of the attached document entitled “[•]”;
- (b) all the terms of the [•] will form part of any subcontract which the Contractor enters into for the performance of any Work covered by the Contract; and
- (c) failure by the Contractor or any of its Subcontractors to comply with any of the terms contained in the [•] will, at the option of OPG, render the Contract or any such subcontract, or any part of the Contract or any such subcontract as determined by OPG, null and void.

The Contractor will provide OPG upon request evidence satisfactory to OPG that the Contractor and any of its Subcontractors are complying with the terms of the [•]. It is understood that this Acknowledgement of Labour Requirements will form part of the Contract, if OPG enters into the Contract with the Contractor.

Dated: _____

[Insert Full Legal Name of the Contractor]

Name:
Title:

SCHEDULE 2.5

CYBER SECURITY

1.1 **Certain Definitions.** For the purposes of this Schedule 2.5:

- (a) **“Cyber Asset”** means any computing hardware, software or other computing or information technology (including firmware) transferred, licensed, made available, or otherwise provided by the Contractor to OPG that: (a) has the ability to impact the availability, integrity or confidentiality of OPG Systems and Information; and (b) may form part of, may be connected to, or may be used to access OPG Systems and Information, except if OPG expressly specifies that such computing hardware, software or other computing or information technology are not considered Cyber Assets under this Contract.
- (b) **“Cyber Equipment”** means any of the Contractor’s computing hardware, software or other computing or information technology (including firmware) that will be connected to OPG Systems and Information, or will be used to access, create, modify, store, process or transmit OPG Data.
- (c) **“Cyber Services”** means any application, infrastructure or services provided by the Contractor in relation to any computing hardware, software or other computing or information technology (including firmware) that: (a) has the ability to impact the availability, integrity or confidentiality of OPG Systems and Information; and (b) may form part of, may be connected to, or may be used to access OPG Systems and Information, except if OPG expressly specifies that such application, infrastructure or services are not considered Cyber Services under this Contract.
- (d) **“OPG Data”** means all information relating to OPG, its business, financial position, assets, technology, operations, activities or proposed activities and prospects, including any technical, commercial, legal, financial, strategic, tactical, regulatory or governmental information, reports, drawings, specifications, contracts, business plans, projections, forecasts or other documents or information, whether written or oral, and including such information that is provided to the Contractor by OPG or its representatives, or otherwise received or accessed by the Contractor, under this Contract, or created or provided to OPG by the Contractor under this Contract.
- (e) **“OPG Systems and Information”** means OPG’s network(s), information systems, industrial control systems, or any components thereof (including computing hardware, software or other computing or information technology), and any OPG Data.

1.2 **Cyber Security Requirements.** The Contractor:

- (a) represents and warrants to OPG that: (i) the Contractor has a written and enforceable cyber security policy, and has established and maintains a cyber security program that is designed and implemented to prevent, detect and respond to cyber attacks that may impact OPG Systems and Information; and (ii) the Contractor’s Personnel (which, for the purposes of these requirements, includes any of the Contractor’s personnel having access to OPG Systems and Information) have completed position-appropriate cyber security training;
- (b) will immediately revoke all access to OPG Systems and Information for any of the Contractor’s Personnel who is terminated or no longer needs access to OPG Systems and Information;

- (c) will notify OPG by sending an email to sccs@opg.com within 48 hours after discovering any security breach, incident or vulnerability impacting or otherwise involving OPG Systems and Information (including any Cyber Equipment if the Contractor, acting reasonably, believes any such security breach, incident or vulnerability may have impacted or may potentially impact OPG Systems and Information), and furthermore if such security breach, incident or vulnerabilities relates to any Cyber Asset, Cyber Equipment, or Cyber Service, the Contractor will also: (i) include in such written notification of any security breach, incident or vulnerability to OPG a description of the breach, incident or vulnerability, its potential security impact, its root cause, a remediation plan, and recommended mitigating or corrective actions; and (ii) promptly and continuously cooperate and coordinate with OPG to prevent, stop, contain, mitigate, resolve, recover from, respond to, and otherwise deal with any security breach, incident or vulnerability, including by providing OPG with ongoing status reports;
- (d) will: (i) ensure that no contaminants, including viruses, worms, Trojan horses, adware, spyware, trackware, hack tools, dialers, joke programs, time locks or other software routines, codes or instructions of a similar nature are placed on, or allowed access to, any OPG Systems and Information; and (ii) perform patching and testing on any Cyber Equipment, including through the performance of anti-malware and vulnerability scans, in order to identify and correct or mitigate any cyber security weaknesses or vulnerabilities;
- (e) if OPG provides specific Contractor's Personnel with a unique user identification (ID) to access OPG Systems and Information ("**Designated Named Account(s)**") will: (i) ensure only the Contractor's Personnel designated by name may use the Designated Named Account(s); (ii) ensure the Designated Named Account(s) are not shared with any individual or entity other than such Contractor's Personnel; and (iii) notify OPG immediately after becoming aware of a decision to terminate or re-assign any of the Contractor's Personnel who OPG provided Designated Named Account(s) to, to allow OPG to revoke such Contractor's Personnel's access on a timely basis;
- (f) if OPG provides the Contractor with a generic user identification (ID) to access OPG Systems and Information ("Generic Account"), will: (i) ensure only the Contractor's Personnel authorized by OPG may use the Generic Account; (ii) ensure the Generic Account is not shared with any individual or entity other than such Contractor's Personnel; (iii) periodically change the password for the Generic Account; and (iv) notify OPG immediately after becoming aware of a decision to terminate or re-assign any of the Contractor's Personnel authorized by OPG and change the password for the Generic Account immediately following such termination or re-assignment;
- (g) if remote access (such as Contractor-initiated interactive remote access or system-to-system remote access) is required to access OPG Systems and Information, will: (i) only use those internet protocol (IP) addresses, ports, and minimum privileges required for the remote access as mutually agreed by the parties; (ii) only use Designated Named Account(s); and (iii) in case of system-to-system connections that may limit OPG's capability to authenticate the personnel connecting from the Contractor's systems, maintain complete and accurate books, user logs, access credential data, records, and other information applicable to connection access activities for the entire term of this Contract;
- (h) will ensure that OPG Data is properly safeguarded; and
- (i) if the Contractor is required by OPG to dispose of OPG Systems and Information, will ensure that: (i) the disposal is done securely and in a timely manner and in compliance with Applicable Laws; and (ii) if the Contractor retains any OPG Data created on the Contractor's computer systems by its normal back-up procedures, the Contractor: (a) has

restricted access to any backed-up OPG Data; (b) does not intentionally attempt to recover such OPG Data, unless required by Applicable Laws; and (c) if the Contractor does recover any such OPG Data (including as a result of a disaster recovery procedure), the Contractor will immediately dispose of such OPG Data, unless required by Applicable Laws, provided that if the Contractor is required by Applicable Laws to recover or disclose any such OPG Data, the Contractor will: provide OPG prompt notice of such requirement and the details thereof so that OPG may challenge such requirement or seek an appropriate protective order; consult with OPG on the advisability of taking legally available steps to resist or narrow such requirement; disclose only such OPG Data as is required by Applicable Law; and use best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such OPG Data.

1.3 Cyber Assets or Cyber Services. If the Contractor is providing any Cyber Assets or Cyber Services to OPG, in addition to the foregoing the Contractor:

- (a) will provide to OPG: (i) documentation that describes the Contractor's applicable aspects of its system development lifecycle and patch management program and update processes; (ii) documentation that describes the cyber security features and wireless or remote networking capabilities of the Cyber Asset; and (iii) cyber security-focused instructions, including manuals, for the maintenance, support and reconfiguration of the Cyber Asset, and best practice recommendations for hardening of the Cyber Asset and, as applicable, OPG Systems and Information;
- (b) will provide to OPG the appropriate patches and/or updates to remediate any security vulnerabilities in the Cyber Asset within seven days after becoming aware of any vulnerabilities, disclose to OPG its mechanisms to deliver software, firmware and patches, such as checksums, digital signatures or other means of identification for all software, patches and configuration files, and ensure its controls will enable OPG to verify the authenticity and integrity of the patches delivered through these mechanisms. If patches and/or updates cannot be made available by the Contractor within the specified period, the Contractor will provide mitigations and/or workarounds until the patches and/or updates are available and provided. This provision also applies to all third-party components used in the Cyber Asset;
- (c) if applicable, will use tamper-evident packaging when supplying to OPG any computing hardware and, at OPG's request, provide copies of any documentation to show the chain-of-custody for such hardware; and
- (d) will use information technology security best practices in the development of the Cyber Asset and will ensure that: (i) there are no hardcoded passwords utilized in the Cyber Asset; (ii) there are no accounts or known methods that are able to bypass authentication in the Cyber Asset, unless the Contractor has made OPG aware of, and OPG has accepted in writing, such accounts or methods; and (iii) the most critical security weaknesses are addressed in the Contractor's system development life cycle (the Contractor will refer to applicable standards, such as the SANS Top 25 Most Dangerous Software Errors, the OWASP Top 10, or their successors).

SCHEDULE 2.8

SAFETY (“OWNER” AND “CONSTRUCTOR”)

- (a) **Primary Goal.** In the performance of the Work, the Contractor and any Subcontractor will not in any manner endanger the safety of, or unlawfully interfere with other persons on or off the Site, including the public, and will maintain a level of safety equivalent to that of OPG’s employees while getting to and from the Site, as well as working at the Site.
- (b) **Constructor.** OPG will be the “Constructor” in respect of the Work for the purposes of the *Occupational Health and Safety Act* (Ontario). The “Constructor” will submit the required notice of project and registration form to the applicable governmental authority. The Contractor acknowledges that OPG has provided to the Contractor copies of all the designated substance reports (as defined under the *Occupational Health and Safety Act* (Ontario)) for the Sites, listed in Appendix A to this Schedule 2.8.
- (c) **Compliance.** The Contractor will provide all the Work in accordance with:
- (1) all Applicable Laws;
 - (2) to the extent not inconsistent with (1) above, OPG’s safety requirements, as amended from time to time, all of which may be amended from time to time; and
 - (3) to the extent not inconsistent with (1) or (2) above, Good Industry Practice respecting health and safety and in a manner that recognizes and minimizes the risks to workers, other individuals including the public, and property.
- (d) **Deliverables.** Based on the requirements in (c) above, the Contractor will develop a health and safety program for the project (the “**H&S Program**”) that will meet or exceed the requirements in (c) above. The H&S Program will include a specific Contractor-developed safety plan associated with managing safety risks for every major project phase (the “**Site Specific Safety Plan**” or “**SSSP**”), which will be developed in accordance with Appendix B to this Schedule 2.8, as applicable. Contractor’s H&S Program and SSSP will be submitted to OPG for review 30 days prior to the commencement of the on-Site Work. Associated work tasks will be identified by the Contractor, assessed for health and safety risks and planning of the Work will be based on a graduated risk approach. The Contractor will ensure that all Subcontractors work to the same standards for safety as those that apply to the Contractor. The Contractor will develop the H&S Program and the SSSP that comply with all requirements in (c) above.
- The Contractor will forward to OPG as a submittal, without delay, any changes to its H&S Program made during the course of providing the Work. OPG will monitor the compliance of the Contractor and Subcontractors with these requirements through field inspections from time to time throughout the course of the Work. The Contractor will rectify any deficiencies immediately upon written or verbal direction from OPG’s Representative. OPG may also have any aspect of the Contractor’s H&S Program reviewed by persons designated by OPG. The Contractor will provide such other persons with prompt access to the Site and all premises and documents required for such review. The Contractor will forward to OPG, without delay, any change to the Council Amendment to Draft #7 (CAD-7) rating of the Contractor or to any Subcontractor providing Work at the Site.
- (e) **Effect of Review.** The Contractor’s safety obligations under this Contract will be in no way affected by any action or inaction by OPG with respect to any aspect of the

Contractor's or a Subcontractor's safety program (including as part of OPG's inspections or reviews), including any comment, review, action, or failure to do any of the foregoing.

- (f) **Joint Health and Safety Committee.** The Contractor will be responsible for participating on the applicable OPG Joint Health and Safety Committee (the "**JHSC**") in compliance with the requirements in the *Occupational Health and Safety Act* (Ontario), which will include OPG's Representative as a member and representation from other OPG contractors. The JHSC will establish a trades committee for the project, if required.
- (g) **Safety Representative.** The Contractor will provide a qualified and experienced full time health and safety supervisor for the project to act as the single point of contact for the Contractor with respect to health and safety on the Site / project, whose sole obligations will be (i) ensuring that the Contractor and the Contractor's Personnel comply with all Applicable Laws and health and safety obligations under this Contract, (ii) the training of the Contractor's Personnel in safety, (iii) prevention of accidents, and (iv) the maintaining, reviewing, revising and supervising of safety precautions and programs.
- (h) **Safety Precautions and Remedies.**
 - (1) **Protection.** Subject to a written or verbal direction from OPG's Representative to the Contractor, the Contractor will initiate, maintain, review, revise and supervise all safety precautions and programs in respect of the Work. The Contractor will take all necessary precautions (including ensuring that all of the Contractor's Personnel are equipped with, and properly use, all safeguards and personal protective equipment necessary for the performance of the Work) for the safety of, and will provide the necessary protection to prevent damage, injury or loss resulting from the performance of the Work to:
 - (A) each person who is on the Site or who may otherwise be affected by the performance of the Work, including the Contractor's Personnel and members of the public;
 - (B) any of the Goods, whether in storage on or off Site;
 - (C) the Project; and
 - (D) any other property on, under, over or near the Site, whether belonging to OPG or to any other person, including buildings and other structures, facilities, fences, gates, pavements, roadways, sidewalks, walks, vegetation and utilities that are not designated for removal and disposal in the course of providing the Work.
 - (2) **Work Protection.** The Contractor will provide all Work under work protection ensuring that equipment being worked on is safely isolated and de-energized. Generally, OPG will provide isolation and de-energization, although the Contractor is responsible for co-ordinating all work protection with OPG's Representative. Under special circumstances, suitably trained and qualified members of the Contractor's Personnel may be permitted, with the prior approval of OPG, to apply trades administered work protection in accordance with OPG's Work Protection Code, a copy of which has been made available to and reviewed by the Contractor.
 - (3) **Notification of Owners.** Promptly after becoming aware of any utility, owner of underground facilities and owner of property (excluding OPG and its subsidiaries) on, under, over or near the Site that may be affected by the Work, the Contractor will deliver a Notice to OPG's Representative as setting out how each such utility

or owner may be affected and the identity of any such affected person. At OPG's direction, the Contractor will address or co-operate with OPG in addressing all issues respecting the performance of the Work, including the protection, removal, relocation or replacement of the property of any such person. If applicable, the Contractor will comply with s. 228 of the *Construction Projects* regulation (O. Reg. 213/91) under the *Occupational Health and Safety Act* (Ontario).

- (4) **Repair of Damage.** To the extent that any third party, such as a utility, owner of underground facilities or owner of property (excluding OPG and its subsidiaries) on, under, over or near the Site suffers or incurs any Losses to any property caused by the Contractor or a Subcontractor, the Contractor will remedy such Losses in a timely manner and at the Contractor's expense.
- (i) **Safety Reports.** During the performance of the Work, the Contractor will provide OPG's Representative with:
- (1) a verbal report immediately (and evidence of such verbal report by a senior executive of the Contractor) of all accidents, near misses or any incidents that result in, or could reasonably be expected to result in, death from either immediate or delayed effects or permanent total disability, that is, where an individual is disabled to the point where maintaining gainful employment is unlikely (a "**High Maximum Reasonable Potential for Harm Incident**"), which the Contractor is required to provide to OPG in accordance with OPG's safety incident management standard, a copy of which has been made available to and reviewed by the Contractor, including any serious incident requiring off-site medical attention or near miss incidents, which in each case has or could have resulted in the death of, or serious injury to, a worker or other person on or off the Site;
 - (2) in addition to any immediate verbal report that is required under Section (i)(1) of this Schedule 2.8, as applicable, within 24 hours of an accident, construction occurrence or incident report, a copy of all accident, construction occurrence and incident reports which the Contractor, any Subcontractor, or OPG is required to submit in respect of the Work under the *Occupational Health and Safety Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario);
 - (3) within 24 hours, Notice of any visits by the Ministry of Labour and copies of any reports, orders to comply, charges, stop work orders, and notices of compliance under the *Occupational Health and Safety Act* (Ontario) or other Applicable Laws;
 - (4) a copy of the minutes of each meeting of the JHSC; and
 - (5) a monthly report within ten days of each month's end with safety statistics for Contractor and all Subcontractors providing Work at the Site. The Contractor will include in this report, with a brief description of each incident and injury:
 - (A) the number of injuries resulting in a worker requiring medical aid;
 - (B) the number of near miss incidents which could have resulted in the death of, or serious injury to, a worker;
 - (C) the number of injuries resulting in a worker's absence from one or more complete shifts;
 - (D) the time off each worker takes off from work for each injury;

- (E) the number of Ontario Ministry of Labour orders to comply received by the Contractor or a Subcontractor; and
 - (F) the total number of person hours worked by the Contractor's Personnel at the Site broken down between the Contractor and each Subcontractor.
- (j) **Stop Work Orders.** The Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation, and/or claims for Losses, where an order to comply, stop work order or any similar order or notice respecting the Work is issued by the Ontario Ministry of Labour or any other governmental authority or OPG, or in respect of a stop work order or any similar order issued on a unilateral or bilateral basis by the JHSC, where in OPG's opinion, the stoppage is necessary to protect the safety of persons or property, or is required to investigate safety incidents, except to the extent that an action of OPG or another member of the OPG Group has resulted in such order or notice, including in respect of any time during which any investigation pertaining to an existing or potential stop work order was ongoing. For greater certainty, the foregoing will not be grounds for any change to the Contract Schedule. To the extent OPG or another member of the OPG Group was responsible for such order or notice, this situation will be deemed to constitute an excusable delay. The Contractor will promptly deliver to OPG's Representative a copy of any such order or notice, along with a description of the Contractor's plan in respect of how to address such order or notice. The Contractor will not recommence any Work that have been stopped or suspended without the prior written approval of OPG's Representative.
- (k) **Job Safety Analysis.** The Contractor will prepare a detailed job safety analysis in the form attached as Appendix C to this Schedule 2.8, for each sequential job step in the provision of the Work on the Site. The Contractor will provide a copy of each job safety analysis to OPG's Representative before the provision of any of the Work to which a job safety analysis relates, and at OPG's request, will provide evidence that each job safety analysis has been communicated to all of the Contractor's Personnel and Subcontractors performing the Work. The Contractor will revise and resubmit a job safety analysis, where required, to account for any changes to the Work made in accordance with this Contract or the Contractor's planned work methods. The Contractor will promptly deliver to OPG's Representative any job safety analysis requested by any such individual. The Contractor will identify in each job safety analysis the potential hazards and "Maximum Reasonable Potential for Harm" (as that term is defined in OPG's procedure OPG-PROC-0120: Safety Incident and Regulatory Event Response, as amended from time to time) associated with each job step in the performance of the Work and will develop controls and barriers for each potential hazard and "Maximum Reasonable Potential for Harm". The Contractor will clearly communicate to all applicable Contractor's Personnel the contents of each job safety analysis, as revised, before such persons commence their applicable part of the Work.
- (l) **Investigations.** The Contractor will, at the Contractor's expense, participate and co-operate with OPG, and, at OPG's request, co-operate with any governmental authority acting within its legal authority, in reporting and investigating safety violations caused by any act or failure to act of the Contractor or any Subcontractor. To the extent that the Contractor, any Subcontractor, any of the Contractor's Personnel or any of the Contractor's or any of a Subcontractor's shareholders, directors, officers, partners, members, representatives, agents, advisors or any other person for whom the Contractor or any Subcontractor is responsible at law is responsible for the circumstances giving rise to a safety violation, the Contractor will pay OPG for the applicable portion of the costs and expenses incurred by OPG in respect of steps taken by OPG to investigate, report and/or alleviate the safety situation.

- (m) **Emergencies.** In emergencies affecting the safety or protection of individuals, the Work, Goods or project or property on, under, over or near the Site, the Contractor, without the express consent of OPG, will take reasonable actions to prevent or minimize all threatened or actual damage, injury and loss. Subject to Section 5 of the Contract, the Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation and/or claims for Losses where the Contractor is required to evacuate or assemble in the event of a response to an emergency.
- (n) **Requirement to Leave.** In the case of an emergency requiring the Contractor to leave the Site at the direction of OPG, the Contractor will put all equipment in a safe state in accordance with the *Occupational Health and Safety Act* (Ontario) and leave the Site in an orderly fashion pending further instructions from OPG's Representative.
- (o) **Hazard Communication Programs.** The Contractor will co-ordinate all exchanges of material safety data sheets and other hazard communication information related to the Work required to be made available to, or exchanged between or among, persons at the Site.

APPENDIX A TO SCHEDULE 2.8
DESIGNATED SUBSTANCES REPORTS

APPENDIX B TO SCHEDULE 2.8

SUGGESTED SITE SPECIFIC SAFETY PLAN CONTENTS

- 1.0 Scope of Work
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- 3.0 Regulatory Framework
 - 3.1 General
 - 3.2 Permits
- 4.0 Roles and Responsibilities
 - 4.1 Project Manager
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 - 4.3 Worker
 - 4.4 Site Safety Manager
 - 4.5 Corporate Safety
- 5.0 Hazard Evaluation
 - 5.1 Hazard Identification
 - 5.2 Risk Assessment
 - 5.3 Control Measures
- 6.0 Site-Specific Procedures
 - 6.1 General Site Rules
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- 7.0 Communication
 - 7.1 Project Meetings
 - 7.2 Safety Meetings – Supervisor and Crew Meetings
 - 7.3 Pre-Job Briefings
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8.1 Training Requirements

8.1.1 Induction Training

8.1.2 Certificates and Qualifications

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9.0 Monitoring

9.1 By Contractor

9.1.1 Equipment Inspections

9.1.2 Site Inspections

9.2 By OPG

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9.5 Correction of Deficiencies

10.0 Emergency Response

10.1 Reporting and Notification

10.2 First Aid Requirements

10.3 Medical Emergency Response

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10.5 Confined Space Rescue

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11.0 Accident/Incident Investigation

12.0 Subcontractor Requirements

APPENDIX C TO SCHEDULE 2.8

JOB SAFETY ANALYSIS FORM

SCHEDULE 2.8

SAFETY (“OWNER” ONLY)

- (a) **Primary Goal.** In the performance of the Work, the Contractor and any Subcontractor will not in any manner endanger the safety of, or unlawfully interfere with other persons on or off the Site, including the public, and will maintain a level of safety equivalent to that of OPG’s employees while getting to and from the Site, as well as working at the Site.
- (b) **Constructor.** The Contractor will be the “Constructor” in respect of the Work for the purposes of the *Occupational Health and Safety Act* (Ontario). The “Constructor” will submit the required notice of project and registration form to the applicable governmental authority. The Contractor acknowledges that OPG has provided to the Contractor copies of all the designated substance reports (as defined under the *Occupational Health and Safety Act* (Ontario)) for the Sites, listed in Appendix A to this Schedule 2.8. The Contractor will have complete and sole responsibility for all health and safety matters regarding the project. The Contractor is not required to ask OPG for any input or recommendations (and OPG may not require the Contractor to take any specified actions) respecting any health or safety matter regarding the project. OPG will not provide to the Contractor any personnel, equipment or Work (other than specified utilities). Notwithstanding any term in this Section (b), OPG may at any time on delivery of a Notice to the Contractor, assume the role of the “Constructor”.
- (c) **Compliance.** The Contractor will provide all the Work in accordance with:
- (1) all Applicable Laws;
 - (2) to the extent not inconsistent with (1) above, the Contractor’s H&S Program (a copy of which is attached as Appendix B to this Schedule 2.8, as amended from time to time); and
 - (3) to the extent not inconsistent with (1) or (2) above, Good Industry Practice respecting health and safety and in a manner that recognizes and minimizes the risks to workers, other individuals including the public, and property.
- The Contractor will forward to OPG as a submittal, without delay, any changes to its H&S Program made during the course of providing the Work. OPG may review, from time to time, the health and safety practices of the Contractor or any Subcontractor during the course of the provision of the Work. OPG will advise the Contractor of any concerns and the Contractor will promptly address any such concern. The precise manner in which any concern is addressed will be determined by the Contractor, provided that OPG retains the right to terminate all or any portion of the Work or to direct that a Subcontractor be replaced for failure to comply with items (1) through (3) of this Section.
- (d) **Effect of Review.** The Contractor’s safety obligations under this Contract will be in no way affected by any action or inaction by OPG with respect to any aspect of the Contractor’s or a Subcontractor’s safety program (including as part of OPG’s inspections or reviews), including any comment, review, action, or failure to do any of the foregoing.
- (e) **Safety Representative.** The Contractor will provide a qualified and experienced full time health and safety supervisor for the project to act as the single point of contact for the Contractor with respect to health and safety on the Site / project, whose sole obligations will be (i) ensuring that the Contractor and the Contractor’s Personnel comply with all Applicable Laws and health and safety obligations under this Contract, (ii) the training of the Contractor’s Personnel in safety, (iii) prevention of accidents, and (iv) the

maintaining, reviewing, revising and supervising of safety precautions and programs. The Contractor will form a joint health and safety committee that will include representatives of the Contractor and the trades.

- (f) **Safety Precautions and Remedies.**
- (1) **Protection.** The Contractor will be solely responsible for initiating, maintaining, reviewing, revising and supervising all safety precautions and programs in respect of the Work. The Contractor will take all necessary precautions (including ensuring that all of the Contractor's Personnel are equipped with, and properly use, all safeguards and personal protective equipment necessary for the performance of the Work) for the safety of, and will provide the necessary protection to prevent damage, injury or loss resulting from the performance of the Work to:
- (A) each person who is on the Site or who may otherwise be affected by the performance of the Work, including the Contractor's Personnel and members of the public;
 - (B) any of the Goods, whether in storage on or off Site;
 - (C) the Project; and
 - (D) any other property on, under, over or near the Site, whether belonging to OPG or to any other person, including buildings and other structures, facilities, fences, gates, pavements, roadways, sidewalks, walks, vegetation and utilities that are not designated for removal and disposal in the course of providing the Work.
- (2) **Lock Out Requirements.** The Contractor will ensure that all equipment being worked on is safely isolated and de-energized and will provide all Work in compliance with all lock out requirements set out in the *Occupational Health and Safety Act* (Ontario).
- (3) **Notification of Owners.** Promptly after becoming aware of any utility, owner of underground facilities and owner of property (excluding OPG and its subsidiaries) on, under, over or near the Site that may be affected by the Work, the Contractor will deliver a notice to OPG's Representative as setting out how each such utility or owner may be affected and the identity of any such affected person. At OPG's direction, the Contractor will address or co-operate with OPG in addressing all issues respecting the performance of the Work, including the protection, removal, relocation or replacement of the property of any such person. If applicable, the Contractor will comply with s. 228 of the *Construction Projects* regulation (O. Reg. 213/91) under the *Occupational Health and Safety Act* (Ontario).
- (4) **Repair of Damage.** To the extent that any third party, such as a utility, owner of underground facilities or owner of property (excluding OPG and its subsidiaries) on, under, over or near the Site suffers or incurs any Losses to any property caused by the Contractor or a Subcontractor, the Contractor will remedy such Losses in a timely manner and at the Contractor's expense.
- (g) **Safety Reports.** During the performance of the Work, the Contractor will provide OPG's Representative with:
- (1) a verbal report immediately (and evidence of such verbal report by a senior executive of the Contractor) of all accidents, near misses or any incidents that result in, or could reasonably be expected to result in, death from either

immediate or delayed effects or permanent total disability, that is, where an individual is disabled to the point where maintaining gainful employment is unlikely (a “**High Maximum Reasonable Potential for Harm Incident**”), which the Contractor is required to provide to OPG in accordance with OPG’s safety incident management standard, a copy of which has been made available to and reviewed by the Contractor, including any serious incident requiring off-site medical attention or near miss incidents, which in each case has or could have resulted in the death of, or serious injury to, a worker or other person on or off the Site;

- (2) within 24 hours of an accident, construction occurrence or incident report, a copy of all accident, construction occurrence and incident reports which the Contractor, any Subcontractor, or OPG is required to submit in respect of the Work under the *Occupational Health and Safety Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario);
- (3) within 24 hours, notice of any visits by the Ministry of Labour and copies of any reports, orders to comply, charges, stop work orders, and notices of compliance under the *Occupational Health and Safety Act* (Ontario) or other Applicable Laws; and
- (4) a monthly report within ten days of each month’s end with safety statistics for the Contractor and all Subcontractors providing Work at the Site. The Contractor will include in this report, with a brief description of each incident and injury:
 - (A) the number of injuries resulting in a worker requiring medical aid;
 - (B) the number of near miss incidents which could have resulted in the death of, or serious injury to, a worker;
 - (C) the number of injuries resulting in a worker’s absence from one or more complete shifts;
 - (D) the time off each worker takes off from work for each injury;
 - (E) the number of Ontario Ministry of Labour orders to comply received by the Contractor or a Subcontractor; and
 - (F) the total number of person hours worked by the Contractor’s Personnel at the Site broken down between the Contractor and each Subcontractor.

- (h) **Stop Work Orders.** The Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation, and/or claims for Losses, where an order to comply, stop work order or any similar order or notice respecting the Work is issued by the Ontario Ministry of Labour or any other governmental authority or OPG, or in respect of a stop work order or any similar order issued on a unilateral or bilateral basis by the JHSC, where in OPG’s opinion, the stoppage is necessary to protect the safety of persons or property, or is required to investigate safety incidents, except to the extent that an action of OPG or another member of the OPG Group has resulted in such order or notice, including in respect of any time during which any investigation pertaining to an existing or potential stop work order was ongoing. For greater certainty, the foregoing will not be grounds for any change to the Contract Schedule. To the extent OPG or another member of the OPG Group was responsible for such order or notice, this situation will be deemed to constitute an excusable delay. The Contractor will promptly deliver to OPG’s Representative a

copy of any such order or notice, along with a description of the Contractor's plan in respect of how to address such order or notice.

- (i) **Emergencies.** In emergencies affecting the safety or protection of individuals, the Work, Goods or project or property on, under, over or near the Site, the Contractor, without the express consent of OPG, will take reasonable actions to prevent or minimize all threatened or actual damage, injury and loss. Subject to Section 2.5 of the Contract, the Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation and/or claims for Losses where the Contractor is required to evacuate or assemble in the event of a response to an emergency.
- (j) **Requirement to Leave.** In the case of an emergency requiring the Contractor to leave the Site at the direction of OPG, the Contractor will put all equipment in a safe state in accordance with the *Occupational Health and Safety Act (Ontario)* and leave the Site in an orderly fashion pending further instructions from OPG's Representative.
- (k) **Hazard Communication Programs.** The Contractor will co-ordinate all exchanges of material safety data sheets and other hazard communication information related to the Work required to be made available to, or exchanged between or among, persons at the Site.

APPENDIX A TO SCHEDULE 2.8
DESIGNATED SUBSTANCES REPORTS

APPENDIX B TO SCHEDULE 2.8
CONTRACTOR'S HEALTH AND SAFETY PROGRAM

SCHEDULE 2.20

ENVIRONMENT

- (e) **Compliance and Protection.** In addition to the Contractor's obligation to comply with all Applicable Laws, the Contractor will provide the Work in a manner that:
- (1) protects health and the environment;
 - (2) complies with the Contractor's environmental management and protection program and plan;
 - (3) complies with all requirements of OPG's environmental management system manual, a copy of which has been made available to and reviewed by the Contractor, except to the extent the provisions of the manual do not comply with Applicable Laws or this Contract;
 - (4) adequately anticipates, protects and plans for impacts to the environment, including from discharges to the environment, erosion and sedimentation, waste disposal and from the use, transportation, storage and disposal of hazardous materials, in accordance with Applicable Laws; and
 - (5) uses all commercially reasonable efforts to reduce, reuse or recycle non-hazardous and non-radioactive waste.
- (f) **Permission.** The Contractor will obtain the prior written consent of OPG's Representative of a work plan which shows details of all on Site Work, including all construction, demolition, paving, disruption to on Site activity or disruptions to vegetation.
- (g) **Notices.** The Contractor will immediately provide OPG's Representative with notice in the form attached as Appendix A to this Schedule 2.20.
- (1) of any changes to its environmental management and protection program and plan made during the course of providing the Work for OPG's review and prior approval;
 - (2) of any discharges, spills, releases, emissions, deposits or leaks of:
 - (A) fuels, oils, hydraulic fluid, pesticides or herbicides;
 - (B) any substance, material, solid, liquid or gas, which is prohibited, limited or regulated by any Environmental Laws, OPG's environmental management system manual or the Contractor's environmental management and protection program and plan; or
 - (C) any other material which is reportable pursuant to Environmental Lawsthat occur at or near the Site or that occur with materials owned or controlled by the Contractor or a Subcontractor;
 - (3) upon receipt of any order, directive, notice or other communication whatsoever received from any governmental authority pursuant to any Environmental Law, together with a copy of such order, directive, notice or other communication; and

(4) upon receipt or issuance of any reporting or communication whatsoever from or to any governmental authority, together with a copy of such reporting or communication, in respect of the Work or the project relating to Environmental Laws.

(h) **Clean up.** The Contractor is responsible for the lawful transport, receipt, inspection, use, management, storage and disposal of all hazardous and non-hazardous substances, materials, solids, liquids, or gasses that are brought on to the Site by the Contractor or any of its Subcontractors or created at the Site during the performance of the Work. The Contractor will, to the satisfaction of all applicable governmental authorities and OPG, in a timely manner, at the Contractor's expense, prevent all further discharges, spills, releases, emissions, deposits or leaks contrary to, and clean up, dispose of and otherwise comply with all requirements of:

(1) Applicable Laws;

(2) to the extent not inconsistent with Section (d)(1), OPG's then current environmental management system manual; or

(3) to the extent not inconsistent with Sections (d)(1) and (d)(2), the Contractor's environmental management and protection program and plan as at the date of this Contract as amended,

respecting all discharges, spills, releases, emissions, deposits or leaks of any substances, materials, solids, liquids, gas, odor, heat, sound, vibration or radiation whatsoever that are caused by the Contractor or any of its Subcontractors and that occur at or near the Site or that occur with materials owned or controlled by the Contractor or any of its Subcontractors.

(i) **Disposal of Hazardous Waste.** Unless otherwise specifically provided for in this Contract, or as authorized in writing by OPG's Representative, the Contractor may not dispose of any hazardous or liquid industrial waste (as defined in the regulations to the *Environmental Protection Act* (Ontario)), or any designated substances (as defined in the *Occupational Health and Safety Act* (Ontario)), on, under, over or near any property owned, leased or licenced by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or in part, including the Site.

APPENDIX A TO SCHEDULE 2.20

ENVIRONMENTAL NOTICE

To: Ontario Power Generation Inc. •	Contract: • (the “ Contract ”) Contract No.:• Environmental Notice No. • Date:•
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Defined terms used in this Environmental Notice have the same meanings given to those terms in the Contract. Under Section 1.3(g) of Schedule 2.20 of the Contract, the Contractor hereby gives OPG notice of:

(a)	the changes to its environmental management and protection program and plan as described on Appendix A to this Environmental Notice;	<input type="checkbox"/>
(b)	the discharge, spill, release, emission, deposit or leak as described on Appendix A to this Environmental Notice, including the substance spilled, the cause of the spill, the quantity of substance spilled, the measures taken to contain the spill and confirmation that the spill has been reported; or	<input type="checkbox"/>
(c)	the order, directive, notice or other communication attached as Appendix A to this Environmental Notice from the Governmental Authority set out in the order, directive, notice or other communication.	<input type="checkbox"/>

[CONTRACTOR]

By: _____
 Name:
 Title:

ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

[CONTRACTOR]

By: _____
Name:
Title: