

**CONTRACT
STANDARD**

<u>Class</u>	<u>Number</u>	<u>Date</u>
A	19	2017

Ontario Power Generation Inc. (“OPG”)

**STANDARD COMMERCIAL TERMS
FOR SUPPLY OF CHEMICAL & GAS PRODUCTS ONLY**

May 2017

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1 Interpretation

1.1 Definitions

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

- (a) “**Contract**” has the meaning given to it in section 1.3(a).
- (b) “**Contract Price**” means the total of any stipulated sums for the Services (or any portion thereof) set forth in this Contract, as amended by any instruction notice.
- (c) “**Installation Site**” means the actual place designated by OPG for installation of the Service Equipment and delivery of Supplies to OPG.
- (d) “**Intellectual Property Rights**” means any rights in or to a Canadian or foreign patent, patent application, utility model, inventor’s certificate, copyright, moral right, trade-mark, trade name, Internet domain name, service mark, trade secret, know-how, confidential information, mask work or integrated circuit topography, industrial design or other intellectual property rights of any kind, whether registered or unregistered.
- (e) “**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.

- (f) “**Service Equipment**” means the vessel, bulk carrier or container, handling, vaporising, metering, weighing or regulating facilities, or other such items provided by the Supplier or (if so specified) by OPG for the purpose of delivery, measurement, storage, transfer, and use of the Supplies.
- (g) “**Services**” means all labour, equipment, Service Equipment, Supplies and acts required to be supplied or performed by the Supplier under this Contract, including all inspection, shipping, handling, delivery and other incidental services required to provide Supplies to the designated location in the prescribed manner.
- (h) “**Subcontractor**” means a person, firm or corporation (including the person’s, firm’s or corporation’s heirs, executors, administrators, personal and legal representatives, successors and permitted assigns) who supplies or performs any of the Services under an agreement with the Supplier, another Subcontractor or a combination of the Supplier and another Subcontractor.
- (i) “**Supplier**” means the party contracting with OPG under this Contract.
- (j) “**Supplier’s Personnel**” means all personnel used by the Supplier or assisting the Supplier in the provision of Services, including any personnel, staff, labour and other employees of the Supplier or a

Subcontractor and any Subcontractor who is an individual.

- (k) “**Supplies**” mean the material, gas, product, or other such substance that is the subject of this Contract.

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. References to standard delivery arrangements will be interpreted in accordance with the Incoterms 2010.

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 Supplier in respect of OPG’s request for the supply or performance of the Services.
- (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 to this Contract, in the form of instruction notices to the purchase order, or purchase order revisions, which will take precedence over the documents amended thereby.
- (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.
- (e) This Contract and the Services required thereby will be interpreted to include all Services reasonably required to provide a result that is fit for OPG’s purposes. Where this Contract sets forth design or performance descriptions or criteria, such descriptions and criteria will be considered part of OPG’s specifications to the extent that they enhance the requirements of such specifications.

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.

1.5 Language and Units of Measure

All communication between the Supplier 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 Supplier will ensure that the International System of Units (SI) will be used for all purposes respecting the Services.

2 Supplier’s Obligations

2.1 Codes of Conduct

The Supplier will:

- (a) not take any action that would cause OPG or any of its directors, officers, employees, agents or representatives to be in breach of any of the obligations set out in OPG’s Code of Business Conduct (“**COC**”); and
- (b) comply with all of the obligations and be aware of potential consequences set out in OPG’s Supplier Code of Business Conduct (“**SCOC**”).

A current copy of the COC and SCOC may be reviewed at www.opg.com.

2.2 Permits, Laws and Regulations

The Supplier will comply with all applicable laws (including federal, provincial and municipal statutes, regulations and bylaws) pertaining to the Services and their performance. Unless otherwise specified in this Contract the Supplier will obtain, at its cost, all permits and other consents required in respect of the Services.

2.3 Anti-Bribery and Corruption

The Supplier will comply with, and will take all reasonable measures to ensure that the Supplier’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 Supplier 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. The Supplier will permit OPG, upon OPG’s request to: (i) review its policies and procedures described in this section 2.3; and (ii) audit all records of the Supplier related to the Services for the purpose of verifying compliance with the Anti-corruption Laws.

2.4 Cyber Security

For the purposes of this section:

“**Cyber Deliverables**” means (i) any computing hardware, software or other computing or information technology provided by the Supplier 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; or (ii) any application, infrastructure, or project services provided by the Supplier in relation to (i); except in respect of (i) and (ii) where OPG has expressly stated in this Contract that a particular technology or service to be provided by the Supplier is not a Cyber Deliverable for the purposes of this Contract.

“**Cyber Equipment**” means any computing hardware, software or other computing or information technology used by the Supplier that will be connected to, or will be used to access OPG Systems and Information.

“**Cyber Services**” means Cyber Deliverables and Cyber Equipment, collectively.

“**OPG Systems and Information**” means OPG’s network(s), information systems, industrial control systems, or any components thereof, or any of OPG’s information.

If the Supplier is performing Cyber Services, providing any Cyber Deliverables, or is using any Cyber Equipment, the Supplier:

- (a) represents and warrants to OPG that (i) the Supplier has established and maintains a cyber security program designed to ensure the availability, integrity and confidentiality of Cyber Services (the “**Supplier Cyber Security Program**”); (ii) the Supplier has implemented and maintains written cyber security policies designed to ensure security assurance in relation to Cyber Services; and (iii) as part of the Supplier Cyber Security Program, the Supplier’s Personnel delivering the Cyber Services are provided and required to attend position-appropriate cyber security training;
- (b) will ensure that where OPG provides specified individuals who are the Supplier’s Personnel with a user ID to access OPG Systems and Information (“**Designated Named Account(s)**”) (i) only those individuals designated by name may use the Designated Named Account(s); (ii) the Designated Named Account(s) are not shared with any other individual or entity; and (iii) the Supplier notifies OPG immediately as soon as becoming aware of a decision to terminate or re-assign any of those individuals to which a Designated Named Account is assigned to allow OPG to remove such Supplier’s Personnel’s access on a timely basis;
- (c) will provide to OPG (i) documentation that describes the cyber security features, and wireless or remote networking capabilities of the Cyber Deliverables; and (ii) cyber security-focused instructions, including manuals, for the maintenance, support and reconfiguration of the Cyber Deliverables, and recommendations for hardening of the Cyber

Deliverables and, as applicable, OPG Systems and Information;

- (d) will notify OPG, as soon as technically feasible, after becoming aware of any identified security breaches, incidents or vulnerabilities impacting or otherwise involving (i) any Cyber Deliverables that have been supplied or are to be supplied; (ii) the supply chain of any such Cyber Deliverables; or (iii) any Cyber Equipment where, in the case of (iii), the Supplier, acting reasonably, believes any such security breaches, incidents or vulnerabilities may have impacted or may potentially impact OPG Systems and Information. The notification will include a description of the breach, incident or vulnerability, its potential security impact, the Supplier’s remediation plan, and recommended mitigating or corrective actions;
- (e) will provide to OPG appropriate patches and/or updates to remediate any security vulnerabilities in the Cyber Deliverables on a timely basis, disclose to OPG its mechanisms to deliver 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;
- (f) will use tamper-evident packaging when supplying to OPG any computing hardware and, at OPG’s request, will provide copies of any documentation to show the chain-of-custody for such hardware;
- (g) will ensure that (i) no contaminants, including viruses, worms, Trojan horses, adware, spyware, trackware, hack tools, diallers, 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 by any Supplier’s Personnel in connection with any Cyber Services; and (ii) that any Cyber Deliverables, any computing hardware, software comprising the Cyber Deliverables, and any Cyber Equipment are properly tested, including through the use of malware scans, to identify and correct or mitigate any cyber security weaknesses and vulnerabilities;
- (h) will use security best practices in the development of Cyber Deliverables and ensure that (i) there are no hardcoded passwords in the Cyber Deliverables; (ii) there are no accounts or known methods that are able to bypass authentication in the Cyber Deliverables, unless the Supplier has made OPG aware of, and OPG has accepted in writing, such accounts or methods in the Cyber Deliverables; and (iii) the most critical application security weaknesses are addressed in the Supplier’s system development life cycle (the Supplier should refer to applicable standards, such as the [SANS Top 25 Most Dangerous Software Errors](#), the [OWASP Top 10](#), or their successors);

- (i) will ensure that (i) OPG-specific data is adequately protected; and (ii) if the Supplier is required by OPG in compliance with applicable law to dispose of OPG information or computing equipment containing OPG information, the disposal of OPG information is done completely and securely; and
- (j) will promptly collaborate and coordinate with OPG in incident response activities involving OPG Systems and Information where the incident relates to the Cyber Services.

2.5 ISNetworld

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

2.6 Delivery of the Services

- (a) Time will be material and of the essence for this Contract.
- (b) The Supplier will be responsible for arranging its production and shipping schedules so that the Supplies will arrive at the stipulated destination in accordance with the delivery schedule specified in the purchase order.
- (c) In the event of a delay or default in performance by the Supplier, OPG may at its discretion extend the time period for performance, upon conditions satisfactory to OPG. Alternatively, in such event and notwithstanding section 8.1, OPG may terminate this Contract in whole or in part, without any further obligation of any nature to OPG, receive a refund of the corresponding amounts paid to the Supplier and seek satisfactory performance by alternative suppliers. Any extension granted by OPG will not prejudice its ability to exercise its termination rights in the event of further delay or default.

2.7 Communications

The Supplier will reference the Services, Installation Site and purchase order number in all communications with OPG.

2.8 Hazardous Materials

The Supplier when shipping to any OPG site any product which is categorised 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 a Material Safety Data Sheet (“MSDS”). Where the delivery point is a nuclear site, a copy of the MSDS will also be sent to: The MSDS Centre, OPG, Safety Services Department, 1549 Victoria

Street East, Whitby, Ontario, L1W 3C7, Attn: Technical Information Services, Unit Head.

2.9 Subcontractors

The Supplier will provide the name and address of proposed major Subcontractors, together with a list of the items to be supplied or Services to be performed by each. Thereafter, no change involving any major Subcontractor will be made without adequate cause and without OPG’s prior written approval. The Supplier will be fully responsible for all acts and omissions of each Supplier’s Personnel and any such acts and omissions will be deemed to be those of the Supplier. Accordingly, respecting each obligation of the Supplier under this Contract, the Supplier will ensure that no Supplier’s Personnel and that no Subcontractor will breach any such obligation.

2.10 Intellectual Property

- (a) The Supplier will pay all royalties, licence fees and other monetary amounts required in respect of Intellectual Property Rights associated with the Services.
- (b) The Supplier confirms that it owns or has obtained from third parties, duly authorised grants of all right, title and interest necessary to provide to OPG a licence regarding the Intellectual Property Rights associated with the Services in the manner set out in this Contract including waivers of moral rights for the benefit of OPG and that Supplier will not and has not incorporated into the Services any Intellectual Property Rights the use of which by OPG violates the proprietary rights of third parties. The Supplier 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 Services. The rights granted under this paragraph include a right for OPG to: (i) make copies; and (ii) assign, sublicense and transfer rights granted under this paragraph, in whole or in part, to any third party.
- (c) The Supplier will, at its expense defend all claims, actions or proceedings against OPG relating to or based on any allegation that the Services, or any part of the Services, constitutes an infringement upon, or a misappropriation of any Intellectual Property Rights and will pay to OPG all resulting Losses incurred by OPG. OPG will give the Supplier written notice of any such claim, action or proceeding and at the request and expense of the Supplier, provide all available information, assistance and authority required to conduct its defence.
- (d) If all or any part of the Services is finally determined to constitute an infringement or misappropriation of Intellectual Property Rights of a third party, or if OPG

is enjoined from using any of the Services or Intellectual Property Rights embodied therein as a result of an infringement or misappropriation claim, the Supplier will at its expense promptly: (i) obtain for OPG the right to continue using the Services; (ii) replace the infringing elements of the Services with non-infringing elements, while maintaining the full functionality, integrity and performance capabilities of the Services; or (iii) modify the Services so that they no longer infringe, while maintaining the full functionality, integrity and performance capabilities of the Services.

2.11 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 Supplier's Personnel and, where required for nuclear site access security clearance, a credit check. Upon request by OPG, the Supplier will, at no cost to OPG, submit to OPG's Representative the information required by OPG for each of the OPG identified Supplier'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 Supplier's Personnel complete OPG forms for security clearance, including a five year, or more, residence and work history. If any of the Supplier'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 Supplier'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 notarising. If OPG determines that any of the Supplier'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 Supplier will ensure that the applicable Supplier's Personnel is replaced immediately, at no cost to OPG. OPG will maintain all the information submitted to OPG under this section 2.11 in accordance with applicable laws.
- (b) OPG's security staff will have the right to examine or search equipment, tools, and materials brought to or removed from the Installation Site by the Supplier, Supplier's Personnel or by any Subcontractor. If requested, the Supplier will deposit with the security officer an itemised list of all equipment, tools, and materials at the time they are brought to the Installation Site by the Supplier, Supplier's Personnel or a Subcontractor. The list will be used by the security staff when checking such equipment, tools

and materials into and out of the Installation Site at any security gate.

2.12 Supplier's Property

- (a) **Responsibility for Supplier's Service Equipment.** Unless otherwise indicated in this Contract, the Supplier will supply, install, maintain, service, repair, replace (if necessary) and, when requested, refill the Service Equipment at the Installation Site throughout the period of this Contract, and will, upon expiration or termination of this Contract, remove all Service Equipment that is the property of the Supplier or that the Supplier is otherwise obliged to remove under this Contract. For this purpose, the Supplier will have access to the Installation Site at all reasonable times.
- (b) **Special Requirements for Supplier's Service Equipment.** Before delivery of the Services, the Supplier will identify any special facilities that may be required to accommodate and operate any Service Equipment.
- (c) **Delivery Supplier's Service Equipment** All Service Equipment, containers and packaging materials used for the shipment, storage or transfer of Supplies will conform with relevant federal, provincial and municipal statutes, regulations and bylaws. Marking of portable containers will be in accordance with the latest issue of CSA Z39.

2.13 Health and Safety

The Supplier while transporting or handling Supplies or while performing other Services at any Installation Site, will comply, at its expense, with all federal, provincial and municipal statutes, regulations and bylaws, as well as OPG's safety requirements which pertain to the Services. The Supplier will ensure that, at no additional cost to OPG, all Supplier and Subcontractor workers are equipped with all safeguards and personal protective equipment, necessary for the performance of the Services.

2.14 Environmental Control; Spills

- (a) The Supplier, while performing Services at any Installation Site, will (and will cause each Subcontractor to) comply with relevant statutes, regulations, bylaws and directives of authorities having jurisdiction in matters of ecological protection and environmental control of soil, water and air. Without limiting the generality of the foregoing, the Supplier's attention is directed to the *Environmental Protection Act* (Ontario) and the *Dangerous Goods Transportation Act* (Ontario). The discarding of waste and the dumping of pollutants at the Installation Site will not be permitted.
- (b) The *Environmental Protection Act* (Ontario) requires spill incidents involving fuels, oil, hydraulic fluid, chemical and other pollutants to be reported forthwith to the Ministry of the Environment and to the local municipality where the spill occurred.

- (c) The Supplier will perform all acts required of the owner or controller of any spilled materials and comply with all pertinent legislation. Incidents of spills will be reported immediately to the appropriate authorities in accordance with the legislation. OPG's Representative will also be notified of all spills.
- (d) The Supplier will be responsible for spills and will be liable for any resulting property damage, any costs incurred by OPG for containment and clean up of the spilled material, and any costs, liability or penalties incurred by OPG due to the Supplier's failure to comply with relevant legislation, regulations or procedures.

3 Indemnity and Insurance.

- (a) **Risk of Loss/Indemnity.** During the term of this Contract or any extension thereof:
 - (i) the risk of loss or damage to the Service Equipment will remain with the Supplier;
 - (ii) the Supplier waives all claims against OPG or its employees for loss of, loss of use of, or damage to the Service Equipment, notwithstanding that such claims may arise by reason of negligence or otherwise, and the Supplier will indemnify and save harmless OPG and its employees against such claims by third parties; and
 - (iii) the Supplier will indemnify and save harmless OPG and its employees against all claims for loss, damage or injury arising out of bodily and personal injury, including death and damage to property which may arise from the Supplier's operations under this Contract or the Service Equipment or anything done or omitted in connection therewith.
- (b) **Insurance.** The Supplier will maintain at its own expense, at all times during the term and any extension of this Contract, the following insurance:
 - (i) commercial general liability insurance on an occurrence basis, including contractual liability, products liability and completed operations liability, with minimum limits of not less than \$5,000,000 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 Supplier; and
 - (ii) if motor vehicles are used by the Supplier in the performance of this Contract, automobile liability insurance covering

all owned and non-owned vehicles with a limit of not less than \$1,000,000.

If not already available in ISNetworld, upon execution of this Contract, and upon OPG's reasonable request thereafter, the Supplier 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 Supplier 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) The Supplier may invoice OPG upon performance of the Services at the stipulated destination. OPG will not be obliged to accept deliveries made more than one month ahead of this Contract's delivery dates without its prior written consent.
- (b) OPG will aggregate all outstanding invoices received and approved by OPG for payment before the 25th of each month. Subject to any withholdings required by law, statute or regulation, OPG will pay the Supplier 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 on receipt and acceptance of the Supplies before the date payment is made. In addition, OPG may withhold any payment if there remain outstanding any unresolved non-conformance issues.
- (c) The Supplier 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 Supplier requires that the Supplier provide invoicing information in accordance with this system. The Supplier will set up the preliminary invoicing information on the EIS promptly following the date of this Contract. The Supplier 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 Supplier'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 Supplier is aware and accepts that OPG will review, accept and approve of the Supplier's data submitted via the EIS prior to any issuance of payment. Nothing in this section 4.1(c) diminishes or amends OPG's rights set out in the remainder of this Contract. If the Supplier is located in Canada, OPG will make all payments by electronic funds transfer. The Supplier will deliver to OPG suitable electronic funds transfer instructions from time to time.

4.2 Taxes and Duty

- (a) **Goods and Services Tax/Harmonized Sales Tax.** Canadian Goods and Services Tax (“GST”) / Harmonized Sales Tax (“HST”), if applicable, will be shown as extra and the Supplier’s invoice must identify their 15 digit registration number for purposes of Part IX of the *Excise Tax Act* (Canada).
- (b) **Supplier’s Income Taxes.** OPG will have no liability for any of the Supplier’s income or capital taxes imposed by any governmental authority respecting this Contract.
- (c) **Duty.** The Contract Price will be subject to adjustment for any new customs duties, or for any change in the rate of any applicable customs duty. Adjustments will be based upon the difference between the rate of the customs duties at the date of this Contract and the rate in effect at the date of importation. OPG will have the right to effect an adjustment to the Contract Price for any decrease in any applicable customs duties based on its estimate of the value of foreign content if factual data is not provided by the Supplier on request. Any additional duties, interest, penalties or sales taxes imposed by Canada which are attributable to either dumping duties or change in the value for duty will in all events be solely to the Supplier’s account.
- (d) **Refund of Duty.** The Supplier will co-operate with OPG in applying for and obtaining a refund of any duties or taxes paid by the Supplier or its Subcontractors on any portion of the Services before the refund period expires. The Supplier will require similar co-operation from its Subcontractors. If OPG is the Importer of Record, all amounts received by the Supplier or its Subcontractors by way of such refund will constitute trust monies to which OPG is exclusively entitled and will be forwarded to OPG forthwith.
- (e) **Importer of Record.**
 - (i) Where the delivery point is outside Canada, OPG will be the Importer of Record for customs purposes.
 - (ii) Where the delivery point is within Canada, should any portion of the Supplies or Service Equipment be manufactured or fabricated outside of Canada, the Supplier or its agent or representative will be the Importer of Record for customs purposes for that portion of the Services.
 - (iii) If for any reason import documentation provided by the Supplier is incorrect, any further duties, interest, penalties or taxes imposed by any governmental authority will be solely to the Supplier’s account.

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 Services and all applicable customs duties, excise taxes, freight, insurance, and all other charges of every kind respecting the Services except for GST or any HST; and (iii) the Contract Price will not be subject to adjustments for changes in any cost of the Services to the Supplier.
- (b) Notwithstanding anything to the contrary in this Contract, if established in the purchase order, OPG will reimburse the Supplier for expenses as provided in OPG’s Business Expense Schedule referred to in the purchase order. Where a Supplier that is registered for GST/HST invoices for Services and for expenses incurred in the performance of the Services, GST/HST will apply to both the Services and expenses.

4.4 North American Free Trade Agreement (“NAFTA”)

- (a) Where the origin of goods is the United States or Mexico or Canada, the Supplier will deliver to OPG a valid certificate of origin with each shipment where the goods offered qualify under NAFTA.
- (b) If OPG is the Importer of Record and is required to pay any additional duties, interest, penalties or taxes resulting from: (i) an invalid certificate of origin, (ii) the Supplier refusing to supply one where applicable; or (iii) changes in the source of supply, then the Supplier will be responsible for any such additional duties, interest, penalties or taxes.

4.5 Changes in the Services

OPG may, without invalidating this Contract, direct the Supplier to make changes in the Services. When a change causes an increase or decrease in the Services, 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 Supplier and OPG’s Representative.

5 Liability

5.1 Limitation of Liability

Subject to section 5.2 below, the liability of either party respecting all claims arising in respect of this Contract will not exceed:

- (a) an amount equal to the Contract Price; plus
- (b) the amount of insurance recoverable under this Contract.

5.2 Exclusions

The Supplier’s limitation of liability set out in section 5.1 above will not apply, however, to:

- (a) the Supplier's obligations (or a breach thereof) under sections 2.10 and 3(a); and
 - (b) claims in relation to bodily or personal injury, including death; and
 - (c) losses suffered or incurred by OPG, its subsidiaries and its and their respective shareholders, directors, officers, employees, advisors, agents and other representatives or any claims, demands, actions, suits or proceedings for Losses made against OPG, its subsidiaries and its and their respective shareholders, directors, officers, employees, advisors, agents and other representatives by any person, to the extent arising in respect of,
 - (i) fraud, gross negligence, the deliberate default or the deliberate or wilful breach of this Contract by the Supplier; or
 - (ii) liability for contribution or indemnity for injury or damage to third parties arising in respect of the Supplier's negligence.
- bylaws or directives of competent authorities relating to the Services;
 - (v) failing to perform the Services with skill and diligence;
 - (vi) assigning or subletting this Contract or any portion thereof without the required consent;
 - (vii) failing or refusing to correct defective or deficient Services;
 - (viii) giving or offering to give (directly or indirectly) to any person a bribe, gift, gratuity, commission or other thing of note as an inducement or reward; or
 - (ix) 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.

5.3 Consequential Damages

Except for Supplier's obligations (or a breach thereof) under sections 2.10 and 3(a), and except where recoverable under insurance, neither party will be liable to the other party for consequential damages.

6 Acceptance and Correction

6.1 Quality Program

- (a) The Supplier will maintain a quality program that will assure OPG that the Supplies fully meet the requirements of this Contract. The program will conform with quality program standards and/or any other alternative quality assurance requirements specified in this Contract. Any proposed alternative quality assurance requirements will be subject to evaluation by OPG for its equivalency to specified requirements.
- (b) Supplies which do not meet this Contract's requirements will be rejected and any amount paid for same will be forthwith refunded to OPG.

7 Default by Supplier

- (a) Without limitation, the following actions by or circumstances relating to the Supplier will constitute default on the part of the Supplier:
 - (i) committing any act of bankruptcy;
 - (ii) having a receiver appointed on account of insolvency or in respect of any property;
 - (iii) making a general assignment for the benefit of creditors;
 - (iv) failing to comply with or persistently disregarding statutes, laws, regulations,

- (b) Notice that the Supplier is in default will not be required if the default relates to the bankruptcy, insolvency or financial instability of the Supplier. Other than defaults arising from 7(a)(i), (ii) and (iii), OPG will provide the Supplier with ten days written notice of default.

- (c) If the Supplier is in default under this Contract, then OPG will be entitled to terminate this Contract, and in addition or as an alternative to terminating this Contract, OPG may:

- (i) terminate OPG's use of the Supplier to perform the Services;
- (ii) eject and exclude all Supplier's Personnel from the site;
- (iii) withhold any further payments to the Supplier until its liability to OPG is ascertained; and
- (iv) finish or replace the Services by whatever means OPG may deem appropriate under the circumstances.

- (d) The Supplier will be liable to OPG for:

- (i) the extra expense of finishing or replacing the Services, including compensation to OPG for additional engineering, managerial and administrative services;
- (ii) the cost of correcting defects (if any) in that portion of the Services performed by the Supplier;
- (iii) all other loss, damage and expense occasioned to OPG by reason of the Supplier's default; and

- (iv) applicable sales taxes.
- (e) Any action by OPG under this section 7 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 Supplier.

8 Suspension and Termination

8.1 Contract Termination

OPG may from time to time, without cause and without affecting the validity of this Contract, immediately terminate any uncompleted or unperformed Services, in whole or in part, by delivering a notice to this effect to the Supplier. Except to the extent any such termination arises in respect of any event of default by the Supplier, OPG will pay the Supplier 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 Supplier for Services in progress directly incurred in the course of the Services (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. Title to all Services for which reimbursement is made will vest in OPG. OPG will not be liable to the Supplier for loss of anticipated profit or any other economic loss whatsoever on the terminated portion or portions of the Services.

9 General

9.1 Arbitration

Unsettled disputes or claims arising out of the Services may, on the agreement of the parties, be settled through binding arbitration in accordance with the *Arbitration Act, 1991* (Ontario).

9.2 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 Supplier 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, reorganisation 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.

9.3 Notices

Notices to OPG and the Supplier 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 sent by electronic mail, registered post or fax. Such notices will be effective upon receipt.

9.4 Publicity

The Supplier 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.

9.5 Former OPG Employees

OPG has a policy restricting the involvement in OPG contracts of former OPG employees who received a severance package or who are receiving pension payments from OPG or an affiliated enterprise or are on a non-working pension bridge from working with OPG. If the Supplier employs or will be using former OPG employees in the Services, the Supplier will identify the names and responsibilities of each such individual for approval by OPG before engaging them in the Services.

9.6 Non-Solicitation of OPG's Employees

During the term of this Contract and until the date that is six months after the date of termination or expiry of this Contract, the Supplier will not, directly or indirectly, whether through an affiliate, a Subcontractor or otherwise, without the prior written consent of OPG, solicit the employment of, hire or otherwise retain in any capacity, any employee of OPG. A general advertisement not specifically directed at OPG or its employees will not be considered a solicitation under this section 9.6.

9.7 Waivers

No waiver of any term of this Contract is binding unless it is in writing and signed by the party 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.

9.8 Survival

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