



**CONTRACT
STANDARD**

<u>Class</u>	<u>Number</u>	<u>Date</u>
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Ontario Power Generation Inc. (“OPG”)

**STANDARD COMMERCIAL TERMS
FOR GENERAL SERVICES**

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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 2.3.
- (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 Services 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) **“Contractor”** means the party contracting with OPG under this Contract.
- (g) **“Contractor’s Personnel”** means all personnel used by the Contractor or assisting the Contractor in the provision of Services, including any personnel, staff, labour and other employees of the Contractor or a Subcontractor and any Subcontractor who is an individual.
- (h) **“Environmental Law”** means any Applicable Law relating to the protection of the natural environment (including any species that might make use of it) or human health or the import, use, storage, transportation or disposal of any hazardous materials.
- (i) **“Fees”** means the total sum for the Services (or any portion thereof) as set forth in the purchase order(s), calculated in accordance with the applicable pricing model outlined therein.
- (j) **“Good Industry Practice”** means those prudent standards, practices, methods and procedures of assembly, erection, installation, workmanship, inspection, monitoring and testing (and all other activities of the type included in the Services), 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.
- (k) **“Goods”** means any goods, materials, instruments, devices, articles, supplies and equipment, 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, in connection with the performance of the Services.
- (l) **“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.
- (m) **“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.
- (n) **“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.
- (o) **“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.
- (p) **“Services”** means providing all labour, materials, services, Goods, data, consumables and acts required to be supplied or performed by the Contractor under this Contract and the delivery of any submittals and other incidental services required to supply the Goods and Services to the designated location in the prescribed manner.
- (q) **“Site”** means the land or actual place designated by OPG for the performance of the Services.
- (r) **“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 Services under an agreement with the Contractor, another Subcontractor or a combination of the Contractor and another Subcontractor.

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 Services.

1.3 Contract and Order of Precedence

- (a) This "**Contract**" consists of: (i) the purchase order; (ii) 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 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 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 Services.

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 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 Services.
- (b) The Contractor will obtain, at its cost, all permits and other consents required in respect of the Services.

2.3 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 2.3; and (ii) audit all records of the Contractor related to the Goods and Services for the purpose of verifying compliance with Anti-Corruption Laws.

2.4 Cyber Security

The Contractor will, at all times, conduct the Services in accordance with the cyber security requirements set out in Schedule 2.4 attached hereto.

2.5 ISNetworld

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

2.6 Workplace Safety and Insurance Board

The Contractor will provide its Workplace Safety and Insurance Board account number to OPG before commencing the Services 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 Services at the Site.

2.7 Health and Safety

For all Services provided by the Contractor on OPG premises, the Contractor will, at its expense:

- (a) comply with all Applicable Laws and OPG's safety requirements applicable to the Services;
- (b) ensure that all of the Contractor's Personnel are equipped with all safeguards and personal protective equipment as may be necessary for the performance of the Services;
- (c) rectify any failures to comply with any Applicable Laws or OPG's safety requirements applicable to the Services immediately when detected or directed by OPG;
- (d) upon request by OPG, provide OPG with required safety reports or notices relating to the Services;
- (e) comply with any order to comply, stop work or any similar order or notice respecting the Services issued by any governmental authority or by OPG;
- (f) co-operate with OPG in reporting and investigating safety violations caused by any act or failure to act of the Contractor or any of its Subcontractors; and
- (g) to the extent that the Contractor or any of its Subcontractors were responsible for a safety violation, the Contractor will pay OPG for costs and expenses incurred to investigate, report and/or alleviate the safety violation.

2.8 Delivery of the Goods

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.

2.9 Communications

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

2.10 Subcontractors and Contractor's Personnel

- (a) The Contractor will be fully responsible for all acts and omissions of each Subcontractor and the 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.
- (b) The Contractor will ensure that all of the Contractor's Personnel engaged on the project will have the knowledge, abilities, experience and qualifications required for the Services and will be dedicated to the Services. The Contractor will provide such additional support as may be required from time to time for the Services' proper performance.
- (c) Changes to the Contractor's Personnel will require OPG approval.
- (d) OPG may request, at its discretion, that the Contractor Personnel (including personnel of any Subcontractor) be changed. The Contractor will endeavour to accommodate such requests promptly.

2.11 Intellectual Property

- (a) Each party and Subcontractor retains all Intellectual Property Rights to methodology, knowledge and data brought to the Services and used therein. No Intellectual Property Rights existing before the start of the Services 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 Services 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 Services. 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 2.11(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 2.11(d), including obtaining assignments of rights or waivers of moral rights from any of the Contractor's Personnel or any Subcontractor or its personnel.
- (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 Services 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 2.11(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 Services. 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 licencing the Intellectual Property Rights referenced in this Section 2.11(d) and any other Intellectual Property Rights associated with the Services.

- (e) The Contractor 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 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 Services 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 Services, 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 Services;
 - (ii) replace the allegedly infringing elements of the Services with non-infringing elements, while maintaining the full functionality, integrity and performance capabilities of the Services;
 - (iii) modify the Services so that it no longer infringes, while maintaining the full functionality, integrity and performance capabilities of the Services.

2.12 Reasonable Objections by OPG

The Contractor will not use, as part of the Contractor's Personnel, any person 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 Services, including for failure to comply with any applicable health or safety obligations or any other obligations under this Contract.

2.13 Confidential Information

- (a) In preparation for, and in the course of, providing the Services, 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 Services (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 their 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 Services, 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 2.13.

- (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 2.13. 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 2.13 and in which case, each Receiving Party consents to any such injunction, specific performance or other remedy in law or equity.

2.14 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 Services.
- (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.

2.15 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 2.15 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 Services.

2.16 OPG Owned Equipment

- (a) Equipment authorized by OPG for purchase by the Contractor or supplied to the Contractor by OPG, will be used solely in the performance of the Services. Title to such equipment will remain with OPG. Such equipment will be clearly identified as property of OPG. The Contractor will be responsible for safeguarding such equipment while in its custody and control and will maintain a system of inventory control acceptable to OPG. OPG will have reasonable access to the premises of the Contractor for the purpose of verifying records and auditing inventories of such equipment.
- (b) Following completion of the Services or termination of this Contract, the Contractor will, unless otherwise directed, make all such equipment immediately available for pick up by OPG. The Contractor will be liable for the repair or replacement of all OPG owned equipment that becomes damaged or lost while in the custody or control of the Contractor. The Contractor will maintain insurance, in which the Contractor and OPG will be named jointly as insured, covering the full replacement value of all such equipment against the risk of loss or damage.

2.17 Environment

The Contractor will, at all times, perform the Services in accordance with Environmental Laws and any other environmental requirements as may be identified by OPG from time to time.

2.18 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 Services in Canada.

2.19 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 Services 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 OPG quality requirements identify nuclear industry quality assurance standards, such as N286, Z299, N299, the Contractor will (and, if applicable, will cause each of its Subcontractors to) include in its quality assurance program a documented process to prevent, detect and disposition any CFSI. If the Contractor desires to supply or use any Goods that may not meet the requirements of this Section 2.19, 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 Services 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.

2.20 Contractor's Manager

Before commencing the Services, the Contractor will appoint a project manager who will be responsible for the administration and co-ordination of all phases of the Services. The Contractor will not replace such project manager unless the Contractor provides notice to OPG at least three business days before the replacement and OPG consents in writing to such replacement.

2.21 Contractor's Authority

The Contractor will have no authority to bind OPG or to assume or create any obligation or responsibility, either expressed or implied directly or indirectly on OPG's part, or in its name, nor will it represent to anyone that it has such power or authority, except as expressly provided in this Contract.

2.22 Progress Reports

The Contractor will forward to OPG on or before the 20th day of each month, a progress report in such form and detail as may reasonably be requested by OPG, showing the progress of the Services to the end of the preceding month. Such report will also include a summary of the costs to date, estimated cost to completion of the Services and an explanation of any variance from the original estimate. The Contractor will notify OPG immediately upon having expended or committed 80% of the authorized funds.

2.23 Completion of the Services

The Contractor will diligently endeavour to complete the Services in accordance with the schedule set forth in the applicable purchase order and, if necessary, will increase the level of effort/resources necessary to ensure the schedule is maintained. Any price or funding limitations, as outlined in this Contract will not be exceeded without OPG's prior written authorization, notwithstanding any extra efforts required to maintain schedule.

3 Indemnity and Insurance

3.1 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 Services, 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 3.1(a) and 3.1(b), to the extent such Losses or claims are attributable to a breach of this Contract by the Contractor or by 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, 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 2.13; and

- (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 any breach or threatened breach by the Contractor, Subcontractor or any of the Contractor's Personnel of Section 2.11,

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 3.1 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.

3.2 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 Services are performed:

- (a) commercial general liability insurance on an occurrence basis, 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 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 Services, in an amount not less than the full replacement cost thereof. Such insurance will contain a waiver of subrogation in favour of OPG;
- (c) professional liability / errors and omissions liability insurance covering liability for loss due to negligent errors or omissions in an amount of not less than \$2,000,000 per occurrence;
- (d) crime insurance / fidelity bond with limits of not less than \$2,000,000 including a "third party extension" or "client coverage" extending coverage to theft or loss of OPG property; and
- (e) if motor vehicles are used by the Contractor 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 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) Charges for Services rendered and reimbursable expenses incurred may be submitted monthly unless otherwise specified.
- (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 Services 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 Services 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) If at any time during the performance of the Services there are deficiencies in the

Services, including non-delivery of an acceptable final report, OPG will have the right to withhold from any invoice an amount that, in OPG's opinion, takes into account the deficiencies. Any amount withheld will be paid on the 25th day of the following month or following business day if the 25th day falls on a non-business day, after OPG's approval of the correction of deficiencies.

- (f) 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.
- (g) Payments to the Contractor, including final payment, will not relieve the Contractor from any of its obligations or liabilities under the Contract or otherwise.

4.2 Taxes

- (a) Canadian Good 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 this 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 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 Services provided both in and outside Canada, the invoice must separately identify the value of the Services 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 Fees

- (a) In consideration of the provision of Services by the Contractor, OPG agrees to pay to the Contractor the Fees, which Fees will include payment for completion of the Services and the preparation and delivery to OPG of all deliverables to be provided by the Contractor in connection therewith.
- (b) Other than the Fees, OPG will not be required to reimburse the Contractor for any costs or expenses the Contractor incurs in performing the Services, unless expressly set out in the applicable purchase order or otherwise approved in writing by OPG in advance.
- (c) Unless otherwise specified, all amounts to be paid or calculated under this Contract are to be paid or calculated in Canadian dollars.

4.4 Changes in the Services

OPG may, without invalidating this Contract, direct the Contractor in writing to make changes in the Services, 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 Services, the Fees 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.

4.5 Accounts and Right to Audit

The Contractor will keep proper accounts and records of the Services in form and detail satisfactory to OPG or, if not specified, at least

commensurate with Good Industry Practice. Such accounts and records, including invoices, receipts, time cards and vouchers will at all reasonable times be open to audit, inspection and copying by OPG. Accounts and records will be preserved and kept available for audit until the expiration of two years from the date of completion or termination of the Services.

5 Force Majeure

- (a) Neither the Contractor nor OPG will be liable to the other for loss, damage or delay in the Services, 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 Services 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 similar services, 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 Fees.

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 2.11 and 2.13;
- (b) the Contractor's indemnity obligations under Section 3.1 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 3.2) to the extent of the limits specified in Section 3.2; 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 wilful 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 Services, notwithstanding anything else in this Contract, the Services will not be defective. The foregoing warranties and guarantees in this Section 7.1 do not apply to the extent that any breach of the warranty or guarantee is due to the negligence of OPG or any person providing services to OPG, other than the Contractor or a Subcontractor, or, in the case of Goods, the effects of reasonable wear and tear under normal usage by OPG.

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 delivery of the Services, any part of the Services becomes defective, is deficient or fails due to defect in workmanship, construction or material (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 Services. Such costs to correct will not exceed the total amount of Fees paid pursuant to this Contract.

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 Services 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 Sole Remedy for Correction of Defect

If at any time and from time to time following the delivery of the Services, any part of the Services 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 or 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 Services as they come due;
 - (vii) failing to comply with statutes, laws, regulations, bylaws or directives of competent authorities relating to the Services;
 - (viii) failing to perform the Services 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 Services;
 - (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 Services; 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 Services 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 material, 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 Services under this Contract;
 - (iv) finish the Services 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 Services, (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.
- (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 Services, 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 Services. 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 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 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 Services, 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 Fees paid to the Contractor for Services 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 Fees that it has not yet received as of the date of termination of this Contract (other than for Services 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 Fees for all items completed and delivered;
 - (ii) reimbursement for the direct out-of-pocket costs to the Contractor 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, 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 Services 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 Services.

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 Services 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 without the prior written consent of OPG.

- (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 Services 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 Services 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 2.4

CYBER SECURITY

1.1 **Certain Definitions.** For the purposes of this Schedule 2.4:

- (a) **“Cyber Asset”** means:
- (1) any asset designated by OPG as a Cyber Asset; or
 - (2) any computing hardware, software, firmware or other computing or information technology that:
 - (A) is transferred, licensed, made available, or otherwise provided by Contractor to OPG under this Agreement, or is used exclusively by Contractor for OPG under this Agreement, and
 - (B) has the ability to impact the availability, integrity or confidentiality of OPG Systems and Information,unless OPG expressly specifies that such computing hardware, software, firmware or other computing or information technology is not considered a Cyber Asset under this Agreement.
- (b) **“Cyber Equipment”** means any of Contractor’s computing hardware, software, firmware or other computing or information technology that is:
- (1) not a Cyber Asset; and
 - (2) connected to any OPG Systems and Information or is used to access, create, modify, store, process or transmit OPG Data in the course of performing Contractor’s obligations under this Agreement.
- (c) **“Cyber Services”** means any application, infrastructure or related service provided by Contractor in relation to:
- (1) any asset designated by OPG as a Cyber Asset; or
 - (2) any computing hardware, software, firmware or other computing or information technology that has the ability to impact the availability, integrity or confidentiality of OPG Systems and Information unless OPG expressly specifies that such application, infrastructure or related service is not considered Cyber Services under this Agreement.
- (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 Contractor by OPG or its representatives, or otherwise

received or accessed by Contractor, under this Agreement, or created or provided to OPG by Contractor under this Agreement.

- (e) **“OPG Systems and Information”** means OPG’s networks, information systems, industrial control systems, or any components thereof (including computing hardware, software, firmware or other computing or information technology), or any OPG Data.
- (f) **“Priority One Cyber Asset”** means any Cyber Asset designated by OPG in the purchase order as a Priority One Cyber Asset; and
- (g) **“Priority One Cyber Services”** means any Cyber Services designated by OPG in the purchase order as a Priority One Cyber Services.

1.2 **Cyber Security Requirements.** Contractor:

- (a) represents and warrants to OPG that: (i) 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) Contractor’s Personnel (which, for the purposes of these requirements, includes any Contractor 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 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 scs@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 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 vulnerability relates to any Cyber Asset, Cyber Equipment, or Cyber Services, 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 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 Contractor’s Personnel to whom OPG provided Designated Named Account(s), to allow OPG to revoke such Contractor’s Personnel’s access on a timely basis;
- (f) if OPG provides Contractor with a generic user identification (ID) to access OPG Systems and Information (**“Generic Account”**), will: (i) ensure only 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) change the password for the Generic Account on a periodic basis in accordance with best practices; and (iv) notify OPG immediately after becoming aware of a decision to terminate or re-assign any of 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 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 Agreement;
- (h) will ensure that OPG Data is properly safeguarded; and
- (i) if 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 Contractor retains any OPG Data created on Contractor's Cyber Equipment by its normal back-up procedures, Contractor: (a) has restricted access to any backed-up OPG Data; (b) does not intentionally attempt to recover such OPG Data, unless directed by OPG or required by Applicable Laws; and (c) if Contractor does recover any such OPG Data (including as a result of a disaster recovery procedure), Contractor will immediately dispose of such OPG Data, unless directed by OPG or required by Applicable Laws, provided that if Contractor is required by Applicable Laws to recover or disclose any such OPG Data, 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 Contractor is providing any Cyber Asset or Cyber Service to OPG, in addition to the foregoing, Contractor will:

- (a) provide to OPG: (i) documentation that describes 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) 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, including 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 Contractor within the specified period, 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, 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) 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 Contractor has made OPG aware of, and OPG has accepted in writing, such accounts or methods; and (iii) the most critical cyber security weaknesses are addressed in Contractor's system development life cycle (Contractor will refer to applicable standards, such as the [SANS Top 25 Most Dangerous Software Errors](#), the [OWASP Top 10](#), or their successors).

1.4 Priority One Cyber Assets or Priority One Cyber Services

Notwithstanding any other term in this Agreement, if the Contractor is providing any Priority One Cyber Asset or Priority One Cyber Services, in addition to the foregoing, Contractor:

- (a) represents and warrants to OPG that no unsupported system components or binary or machine-executable codes from sources with limited or no warranty are used in the Priority One Cyber Asset;
- (b) will comply with all of OPG's security policies, standards, and procedures as may be provided by OPG to the Contractor from time to time, unless OPG expressly specifies that a particular cyber security policy, standard, or procedure does not need to be adhered to under this Agreement;
- (c) will comply with Applicable Laws, including the North American Electric Reliability Corporation's Critical Infrastructure Protection (NERC CIP) standards for Priority One Cyber Assets or Priority One Cyber Services relating to OPG renewable generation, the Canadian Standards Association (CSA) standard N290.7 for Priority One Cyber Assets or Priority One Cyber Services relating to OPG nuclear facilities;
- (d) will identify in writing to OPG the individual(s) who will be accountable for the overall security of all aspects of the Work;
- (e) will ensure that only Contractor's Personnel authorized by OPG are permitted to access, process, store or transfer OPG Systems and Information and only after verifying the implementation of required security controls as specified in this Agreement and OPG's security policies, standards, and procedures;
- (f) will ensure that OPG Data is properly safeguarded using appropriate encryption at rest and in transit, and will use appropriate physical and logical boundary protection in case of processing, storing, or transmitting OPG Data;
- (g) will: (i) work with OPG to identify and assess all critical components of the Priority One Cyber Asset in terms of the impact of the function or component failure on the availability, integrity or confidentiality of OPG Systems and Information; (ii) identify to OPG any open source, commercially licensed, or secondary market components of the Priority One Cyber Asset; (iii) for each critical component of the Priority One Cyber Asset, including third-party hardware, software, and firmware, provide to OPG all licensing information, version numbers, source of the critical component and, if applicable, the end-of-life of the critical components; (iv) provide to OPG the release schedule and availability of updates and

patches for each critical component; and (v) 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;

- (h) will complete the appropriate tests of the Priority One Cyber Asset and its critical components in order to provide assurance that all known vulnerabilities are identified and removed, and provide the results of such tests to OPG as part of its acceptance of such Priority One Cyber Asset. If OPG, in its sole discretion, decides to assess the appropriateness of the completed tests and acting reasonably determines that additional tests are required in order for OPG to accept the Priority One Cyber Asset, Contractor will complete the additional tests of the Priority One Cyber Asset and its critical components and provide the results of such tests to OPG as part of its acceptance of such Priority One Cyber Asset;
- (i) will identify all logical network-accessible ports and disable any unused or, as determined by OPG, any unnecessary physical and logical ports/protocols in the Priority One Cyber Asset;
- (j) in collaboration and coordination with OPG in incident response activities, will ensure speed of communication, response times, corrective actions, and other related activities are in accordance with OPG's incident response standards provided by OPG to Contractor from time to time. If OPG, in its sole discretion, determines that a security breach, incident or vulnerability relating to or potentially relating to a Priority One Cyber Asset or Priority One Cyber Services is having or may potentially have a high impact on OPG's ability to conduct business or creates a high risk to OPG, based on OPG's risk management policies and procedures, Contractor will provide a remediation plan within one Business Day after receiving notice from OPG of such determination and will target the resolution within seven Business Days after receiving such notice. In all other cases, OPG and Contractor will mutually agree on a timely resolution that in no case will exceed the next scheduled maintenance release, unless OPG, in its sole discretion, accepts a later resolution;
- (k) will maintain valid provenance with respect to any access, creation, modification, storage, or transfer of any Priority One Cyber Asset or related OPG Data; and
- (l) will ensure it has effective audit and accountability policies and procedures in place that cover cyber security, and, upon request by OPG, Contractor will share OPG-relevant cyber security audit information, such as OPG-related portions of a service organization control report, certifications and third-party assessments, with OPG.

OPG reserves the right to audit Contractor in all aspects of cyber security, including (i) development processes, procedures, practices, and methodologies; and (ii) evidence from development and assessment activities providing grounds for confidence that (a) the Contractor has complied with all Applicable Laws, any applicable regulatory standards, and OPG's cyber security policies, standards, and procedures, (b) the required cyber security functionality has been implemented, and (c) the required cyber security strength has been achieved. OPG may use independent third-parties or OPG personnel to conduct assessments of systems, components, products, tools, and services to uncover vulnerabilities prior to accepting the Priority One Cyber Asset or Priority One Cyber Services. Contractor will maintain records related to this Schedule for the period expiring the latest of: (i) three years; or (ii) such other period as set out under this Agreement. Contractor will, at its expense, provide OPG or its auditors prompt access to Contractor's premises, documents, records, and personnel as required for any such audit, and will ensure that OPG or its auditors may conduct similar audits of any of Contractor's subcontractors. If any such audit reveals any breach of any of the foregoing cyber security requirements, Contractor will correct the cause of the breach and reimburse OPG for all internal and external costs of such an audit, and OPG will be entitled to

any other remedy available to it, whether under this Agreement or in accordance with Applicable Laws.

SCHEDULE 4.4
CHANGE ORDER FORM

To:•	Contract: • (the “ Contract ”) Contract No.:• Change Order No.• Date:•
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Defined terms used in this Change Order have the same meanings given to those terms in the Contract.

Change to Services

In accordance with Section 4.4 of the Contract, OPG hereby directs the Contractor to make the following changes in the Services:

1. [•]
2. [•]

Expected Change to Contract Schedule

OPG expects that the changes to the Services set out in this Change Order will have the following effect on the Contract schedule:

3. [•]

Expected Change to Contract Price

OPG expects that the changes to the Services set out in this Change Order will have the following effect on the Contract Price:

Contract Price, as set out in the Contract as of the date of the Contract \$ _____

Total expected change to the Contract Price under this Change Order \$ _____

The parties have duly executed this Change Order.

ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

[CONTRACTOR]

By: _____
Name:
Title: