



**CONTRACT  
STANDARD**

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

**STANDARD COMMERCIAL TERMS  
FOR LEASED EQUIPMENT AND RELATED 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 4.3.
- (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), 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 Equipment and Services as may be required by this Contract or by any applicable governmental authorities having or purporting to have authority.
- (d) **“Codes and Standards”** means all requirements, licences, requests, directives, rules, guidelines, standards, specifications, codes, instructions, circulars, manuals and procedures as

- may be required by this Contract or by any applicable governmental authorities having, or purporting to have, authority over the subject matter contemplated herein.
- (e) **“Contract”** has the meaning given to it in Section 1.3(a).
- (f) **“Contract Price”** means the total sum for the Equipment and Services (or any portion thereof) as set forth in the purchase order(s), calculated in accordance with the applicable pricing model outlined therein.
- (g) **“Delivery Date”** has the meaning given in Section 4.9(a).
- (h) **“Environmental Laws”** 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 impact, use, storage, transportation or disposal of any hazardous materials.
- (i) **“Equipment”** means all materials, machinery, assemblies, instruments, devices or articles, and related components to be leased to OPG, and all associated documentation, including any embedded or accompanying data and computer programs which are incidental to the operation and maintenance of the Equipment to be leased, together with all related upgrades, updates, modifications and enhancements.
- (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 lessor in North America specializing in the provision of the type of work being performed by the Lessor under this Contract under the same or similar circumstances.
- (k) **“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.
- (l) **“Lessor”** means the party contracting with OPG under this Contract.
- (m) **“Lessor Event of Default”** has the meaning given to it in Section 11.
- (n) **“Lessor’s Personnel”** means all personnel used by the Lessor or assisting the Lessor in the provision of the Equipment and Services, including any personnel, staff, labour and other employees of the Lessor or a Subcontractor and any Subcontractor who is an individual.
- (o) **“Lien”** means any:
- (i) lien, charge, attachment, security interest, mortgage, hypothec, claim, deemed trust or other encumbrance, whether fixed or floating, including any lien arising in respect of the *Construction Lien Act* (Ontario);
  - (ii) pledge or hypothecation; or
  - (iii) deposit arrangement, priority, conditional sale agreement or other title retention agreement, equipment trust, capital lease or other security arrangement of any kind,
- respecting any property, whether real, personal or mixed, tangible or intangible.

- (p) **“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.
- (q) **“Operating Instructions”** has the meaning given in Section 4.9(d).
- (r) **“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.
- (s) **“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.
- (t) **“Rental Term”** has the meaning given in Section 3.
- (u) **“Services”** means providing, if required, all engineering work, technical oversight and supervision for installation/commissioning and decommissioning of the Equipment, labour, materials, supplies, the Lessor’s equipment, acts required to be provided by the Lessor, the delivery, transportation, regular maintenance of the Equipment, regular load testing and other required support of the Equipment, documents, designs, drawings, brochures, manuals, software, computer programs and source codes, all packaging, inspection, shipping, handling, delivery and other incidental services required by this Contract.
- (v) **“Site”** means the land or actual place designated by OPG for the delivery of the Equipment and/or performance of the Services.

- (w) **“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 Lessor, another Subcontractor or a combination of the Lessor and another Subcontractor.
- (x) **“Technical Specifications”** means a document delivered to the Lessor in respect of OPG’s request for proposals for leasing the Equipment and performing the Services, and outlining and/or describing the Equipment to be leased, the scope of the Services to be provided, quality assurance program requirements (where applicable) and any other specific requirements.

## 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 and the Equipment.

## 1.3 Contract and Order of Precedence

- (a) This **“Contract”** consists of: (i) the purchase order; (ii) these standard commercial terms; (iii) Technical Specifications; and (iv) the other documents delivered to the Lessor in respect of OPG’s request for the lease and/or supply of the Equipment and 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 6.8. 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 Lessor 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 Lessor will ensure that the International System of Units (SI) will be used for all purposes respecting the Services.

## **2 Lease and Services**

The Lessor and OPG may, from time to time, agree to the leasing of certain Equipment by the Lessor to OPG under and in accordance with the terms of this Contract. Each Equipment lease transaction will be reduced to writing in a purchase order, confirming the specific terms of such lease, and be substantially in the form as

provided by OPG from time to time. In connection with any Equipment lease, the Lessor will perform any Services ancillary to the leasing of the applicable Equipment as may be agreed upon and set forth in a purchase order.

## **3 Term**

The term of the lease (the "**Rental Term**") will commence on the commencement date specified in this Contract or such later date upon which all of the Equipment has been delivered to the Site in accordance with Section 4.9, and will end on the expiry date specified in this Contract or such earlier date on which this Contract is terminated under Section 11 or Section 12.

## **4 Lessor's Obligations**

### **4.1 Codes of Conduct**

The Lessor 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](http://www.opg.com), and a copy of each has been reviewed by the Lessor.

### **4.2 Permits, Laws and Regulations**

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

#### **4.3 Delivery of Counterfeit, Fraudulent and Suspect Items**

The Lessor will (and will cause its Subcontractors to) not use or deliver counterfeit, fraudulent and/or suspect items (“**CFSI**”) as part of the Equipment or while performing the Services. If any piece of Equipment under this Contract is described using a manufacturer part number, a product description and/or specified using an industry standard, the Lessor will ensure that the replacement piece of Equipment supplied under this Contract meets all requirements of the latest version of the applicable manufacturer data sheet, description and/or industry standard. If the Lessor is not the manufacturer of the Equipment, the Lessor will ensure that the Equipment 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 Lessor desires to supply or use any Equipment that may not meet the requirements of this Section 4.3, the Lessor will notify OPG of any exceptions and receive OPG’s written approval prior to shipment or use of such Equipment. 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 Equipment will be dispositioned by OPG and may be returned to the Lessor. The Lessor will promptly replace such CFSI with Equipment acceptable to OPG and the Lessor will be liable for all costs, including OPG’s internal and external costs relating to the removal and replacement of such Equipment.

#### **4.4 Anti-Bribery and Corruption**

The Lessor will comply with, and will take all reasonable measures to ensure that the Lessor’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 Lessor 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 Lessor’s behalf or facilitating the conduct of the Lessor’s business comply with Anti-Corruption Laws. The Lessor will permit OPG, upon OPG’s request to: (i) review its policies and procedures described in this Section 4.4; and (ii) audit all records of the Lessor related to the Equipment and Services for the purpose of verifying compliance with the Anti-Corruption Laws.

#### **4.5 Cyber Security**

The Lessor will, at all times, conduct the Services in accordance with the cyber security requirements set out in Schedule 4.5 attached hereto.

#### **4.6 ISNetworld**

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

#### **4.7 Workplace Safety and Insurance Board**

The Lessor will provide its Workplace Safety and Insurance Board account number to OPG before delivering Equipment or commencing the Services at the Site. The Lessor 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 Lessor will submit a clearance certificate from the Workplace Safety and Insurance Board as to the Lessor’s status and that of all Subcontractors that will be providing Services at the Site.

#### **4.8 Health and Safety**

For all Services provided by the Lessor on OPG premises, the Lessor 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 Lessor’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 Lessor or any of its Subcontractors; and
- (g) to the extent that Lessor or any of its Subcontractors were responsible for a safety violation, the Lessor will pay OPG for costs and expenses incurred to investigate, report and/or alleviate the safety violation.

#### 4.9 Delivery of Equipment

- (a) The Lessor will deliver the Equipment to the location designated by OPG in the applicable purchase order, by the delivery date specified in the applicable purchase order (the "**Delivery Date**").
- (b) In the event of a delay or default in performance by the Lessor, 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.
- (c) Unless otherwise specified in this Contract:
  - (i) the Lessor will be responsible for transporting and delivering the Equipment to the location at the Site designated by OPG;

- (ii) after the expiry of the Rental Term or early termination of this Contract under Section 11 or 12, the Lessor, at its sole expense, will be responsible for transporting and delivering the Equipment from the location at the Site designated by OPG to the Lessor's location, and
- (iii) the Lessor will be solely responsible for risk of loss or damage to the Equipment until the Equipment has been delivered to the location at the Site designated by OPG and accepted by OPG and, after the expiry of the Rental Term or early termination of this Contract under Section 11 or 12, after the Equipment is picked up by the Lessor from the Site to be transported and delivered to the Lessor's location.

- (d) The Lessor will provide to OPG at no additional cost to OPG, prior to the commencement of the Rental Term, the maintenance, operating and servicing instructions and manuals for the Equipment ("**Operating Instructions**") and the training services, if any, specified in this Contract. The Lessor warrants to OPG that the Operating Instructions, if any, that the Lessor is required to deliver to OPG will be complete and sufficient to enable a reasonably skilled and qualified operator to properly operate, maintain and service the Equipment.
- (e) Upon termination of this Contract or expiry of the Rental Term, OPG will return the Equipment to the Lessor in the same condition as at the commencement of this Contract, wear and tear excepted.

#### 4.10 Communications

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

#### 4.11 Subcontractors and Lessor's Personnel

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

#### 4.12 Intellectual Property

- (a) Each party and Subcontractor retains all Intellectual Property Rights to methodology, knowledge and data brought to the Equipment and 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 Equipment and Services will vest exclusively in, and remain with, OPG (the "**New Intellectual Property Rights**"). The Lessor 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. The 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 Lessor 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 Lessor 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 4.12(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 4.12(d), including obtaining assignments of rights or waivers of moral rights from any of the Lessor's Personnel or any Subcontractor.

- (d) The Lessor 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 4.12(c), the Lessor 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 Equipment and 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 Lessor 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 4.12(d) and any other Intellectual Property Rights associated with the Equipment or Services.
- (e) The Lessor will, at its expense, defend all claims, actions or proceedings against OPG relating to or based on any allegation that the Equipment or Services, or any part of the Equipment or 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 Lessor written notice of any such claim, action or proceeding and, at the request and expense of the Lessor, provide all reasonably available information, assistance and authority required to conduct its defence.

- (f) If all or any part of the Equipment or 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 Equipment or Services, any part thereof, or any Intellectual Property Rights embodied therein as a result of any claim of infringement or misappropriation, the Lessor will at its expense promptly: (i) obtain for OPG the right to continue using the Equipment or Services; (ii) replace the allegedly infringing elements of the Equipment or Services with non-infringing elements, while maintaining the full functionality, integrity and performance capabilities of the Equipment or Services; or (iii) modify the Equipment or Services so that it no longer infringes, while maintaining the full functionality, integrity and performance capabilities of the Equipment or Services.

#### 4.13 Reasonable Objections by OPG

The Lessor will not use, as part of the Lessor's Personnel, any person against whom OPG has a reasonable objection. The Lessor 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.

#### 4.14 Confidential Information

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

- (b) All Confidential Information remains, at all times, the exclusive property of the respective Disclosing Party. Except as expressly set out in this Contract, a respective Receiving Party has no licence or other right to use or disclose any Confidential Information for any purpose whatsoever. Such Receiving Party may use Confidential Information only in respect of the preparation for, and the providing of, the Equipment and 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 4.14.

- (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 4.14. 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 4.14 and in which case, each Receiving Party consents to any such injunction, specific performance or other remedy in law or equity.

#### **4.15 FIPPA and OEB Disclosure**

- (a) Lessor 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. Lessor 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 Equipment or 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 Lessor as confidential but will not be liable in any way whatsoever to Lessor 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.

#### **4.16 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 Lessor's Personnel and, where required for nuclear site access security clearance, a credit check. Upon request by OPG, the Lessor will, at no cost to OPG, submit to OPG's Representative the information required by OPG for each of the OPG identified Lessor'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 Lessor's Personnel complete OPG forms for security clearance, including a five year, or more, residence and work history. If any of the Lessor'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 Lessor'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 Lessor'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 Lessor will ensure that the applicable Lessor's Personnel is replaced immediately, at no cost to OPG. OPG will maintain all the information submitted to OPG under this Section 4.16 in accordance with Applicable Laws.

- (b) OPG's security staff will have the right to examine or search, materials, supplies, goods and Lessor's equipment brought to or removed from the Site by the Lessor or by any Subcontractor. If requested, the Lessor will (and will cause each Subcontractor to) deposit with the security officer an itemized list of all materials, supplies, goods and Lessor'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 Lessor'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 Lessor's or the Subcontractor's representative, any Lessor or Subcontractor enclosure on the Site, including the Lessor'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.

#### **4.17 Condition of Site**

The Lessor will ensure that the Site is kept free of all litter and unnecessary equipment of the Lessor.

#### **4.18 Environmental**

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

#### **4.19 Hazardous Materials**

The Lessor when shipping to any OPG Site any product which is categorized as a hazardous material (i.e., compressed gas, flammable or combustible material, oxidising material, poisonous and infectious material, corrosive material or dangerously reactive material) will comply with relevant federal and provincial legislation and regulations pertaining to such materials. The Workplace Hazardous Material Information System ("WHMIS") will apply and all such materials will be properly identified with WHMIS type warning labels. All shipments of such material to OPG Sites will include either a Material Safety Data Sheet ("MSDS") or a Safety Data Sheet ("SDS"). Where the delivery point is a nuclear site, a copy of the MSDS or SDS will also be sent by mail to the attention of the MSDS Centre, OPG Safety Department, at 1600 Champlain Ave, Whitby, Ontario, L1N 9B2 and by email to [hazmat@opg.com](mailto:hazmat@opg.com).

#### **4.20 Site, Physical and Labour Conditions**

- (a) The Lessor expressly waives all claims attributable to errors and/or omissions in the information, representations or estimates by OPG or anyone acting on its behalf, whenever or however made, relative to the physical condition of the Site, the labour conditions affecting the Services or the quantities of Services to be performed.
- (b) Employment of labour on the Site, if applicable, will be and remain at all times in accordance with the Labour Requirements Conditions, which, if applicable, will be attached hereto as an appendix. Assistance regarding the interpretation of the prevailing labour conditions may be obtained from OPG's Manager - Labour Relations. The Lessor will (and will cause each Subcontractor to) maintain good order and discipline at all times among its workers and will not use in the Services any unfit person or anyone not skilled in the task assigned to that person.

#### **4.21 Foreign Nationals**

The Lessor 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.

## **5 Indemnity and Insurance**

### **5.1 Indemnity**

The Lessor 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 Equipment or 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 5.1(a) and 5.1(b), to the extent such Losses or claims are attributable to a breach of this Contract by Lessor or by any negligent act, negligent omission, fraud or willful misconduct of the Lessor, Subcontractor or any of the Lessor'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 Lessor, any Subcontractor or any of the Lessor's Personnel of Section 4.14; 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 arising in respect of any breach or threatened breach by the Lessor, Subcontractor or any of the Lessor's Personnel of Section 4.12,

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 Lessor under this Section 5.1 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 or OPG's Representative.

### **5.2 Insurance**

The Lessor 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 Equipment is provided or 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 Lessor;
- (b) "all-risks" property insurance upon property of every description and kind owned by the Lessor, or for which the Lessor is legally liable, brought onto the site or incorporated into the Equipment or 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 Lessor 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 ISNetwork, upon execution of this Contract, and upon OPG's reasonable request thereafter, the Lessor 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 Lessor 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.

## **6 Terms of Payment**

### **6.1 Payment**

- (a) Charges for Equipment delivered or 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 25<sup>th</sup> day of each month. Subject to any withholdings required by law, statute or regulation, OPG will pay the Lessor this aggregate amount on the 25<sup>th</sup> day of the following month or following business day if the 25<sup>th</sup> day falls on a non-business day of the following month. All payments are conditional however, on the Lessor 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 6.1(b), no invoice will be required to be paid if it is not submitted to OPG within 90 days of the delivery of the Equipment or performance of the Services to which the invoice relates.
- (d) The Lessor 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 Lessor requires that the Lessor provide invoicing information in accordance with this system. The Lessor will set up the

preliminary invoicing information on the EIS promptly following the date of this Contract. The Lessor 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 Lessor'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 Lessor is aware and accepts that OPG will review, accept and approve of the Lessor's data submitted via the EIS prior to any issuance of payment. Nothing in this Section 6.1 diminishes or amends OPG's rights set out in the remainder of this Contract. If the Lessor is located in Canada, OPG will make all payments by electronic funds transfer. The Lessor will deliver to OPG suitable electronic funds transfer instructions from time to time.

- (e) If at any time during the performance of the Services or delivery of the Equipment there are deficiencies in the Services or Equipment, 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 25<sup>th</sup> day of the following month or following business day if the 25<sup>th</sup> day falls on a non-business day, after OPG's approval of the correction of deficiencies.
- (f) Each invoice will indicate labour-hours and/or relevant units of provision of Services.
- (g) Acceptance by the Lessor of the final payment will constitute a waiver of all claims by the Lessor against OPG except those previously made in writing in accordance with this Contract and still unsettled.
- (h) Payments to the Lessor, including final payment, will not relieve the Lessor from

any of its obligations or liabilities under this Contract or otherwise.

## 6.2 Taxes

- (a) Canadian Goods and Services Tax (“GST”) / Harmonized Sales Tax (“HST”), if applicable, will be shown as extra and the Lessor’s invoice will identify its 15 digit registration number for purposes of Part IX of the *Excise Tax Act* (Canada). The Lessor 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 Lessor’s income or capital taxes imposed by any governmental authority respecting this Contract. Unless otherwise stated in this Section 0, OPG will have no liability for any withholding, collection, payment, remitting or reporting of any taxes or statutory deductions paid or payable by the Lessor or any Subcontractor in respect of any Subcontractor or any employee of the Lessor or of any Subcontractor.
- (c) Notwithstanding any term in this Contract, OPG may withhold any amount that is required to be withheld on payments made to non-residents of Canada in accordance with the *Income Tax Act* (Canada) and regulations thereto. OPG will have no obligation to gross up or otherwise increase payments made to the Lessor 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.

## 6.3 Contract Price

- (a) In consideration of the provision of Services and delivery of the Equipment by the Lessor, OPG agrees to pay to the Lessor the Contract Price. Unless otherwise indicated in this Contract, the Contract Price includes all activities required to deliver, lease and maintain the Equipment, and to 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.
- (b) The Contract Price will not be subject to adjustments for changes in any cost of the Services to the Lessor.
- (c) Other than the Fees, OPG will not be required to reimburse the Lessor for any costs or expenses the Lessor incurs in providing the Equipment or performing the Services, unless expressly set out in the applicable purchase order or otherwise approved in writing by OPG in advance.
- (d) Unless otherwise specified, all amounts to be paid or calculated under this Contract are to be paid or calculated in Canadian dollars.

## 6.4 Duty

- (a) 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 Lessor 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 Lessor’s account.

- (b) The Lessor will co-operate with OPG in applying for and obtaining a refund of any duties or taxes paid by the Lessor or its Subcontractors on any portion of the Services before the refund period expires. The Lessor will require similar co-operation from its Subcontractors. All amounts received by the Lessor 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.

**6.5 Importer of Record**

- (a) Where the delivery point is outside Canada, OPG will be the importer of record for customs purposes.
- (b) Where the delivery point is within Canada, should any portion of the Equipment be manufactured or fabricated outside of Canada, the Lessor or its agent or representative will be the importer of record for customs purposes for that portion of the Equipment.
- (c) If for any reason import documentation provided by the Lessor is incorrect, any further duties, interest, penalties or taxes imposed by any governmental authority will be solely to the Lessor's account.

**6.6 North American Free Trade Agreement ("NAFTA")**

- (a) Where the origin of Equipment is the United States, Mexico or Canada, the Lessor will deliver to OPG a valid certificate of origin with each shipment where the Equipment 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 Lessor refusing to supply one where applicable; or (iii) changes in the source of supply, then the Lessor will be responsible for any such additional duties, interest, penalties or taxes.

**6.7 Changes in the Equipment or Services**

OPG may, without invalidating this Contract, direct the Lessor in writing to make changes to the Equipment or Services, in the form of a change order attached hereto as Schedule 6.7. When a change causes an increase or decrease in the cost, scope or schedule of the Equipment or Services, the Contract Price will be increased or decreased by an amount to be agreed upon between the Lessor and OPG's Representative.

**6.8 Accounts and Right to Audit**

The Lessor will keep proper accounts and records of the Equipment and 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.

**7 Equipment**

**7.1 Ownership of Equipment**

Except for the Equipment or any part thereof sold to OPG, the Equipment is, and will at all times be and remain, solely and exclusively the property of the Lessor, and no right, title or interest in the Equipment will pass to OPG other than the right of OPG, as lessee, to possess and use the Equipment for the Rental Term as provided in this Contract. The Equipment will remain personal property notwithstanding that the Equipment or any part of the Equipment may be affixed or attached to any other personal or real property.

**7.2 Inspection by OPG**

OPG has the right to conduct an inspection of the Equipment within ten days of its receipt of such Equipment. If, in the sole discretion of OPG, all or any of the Equipment is not in good operating condition or suitable for the purpose for which it is leased, OPG may (i) provide written notice of such determination to the Lessor, and (ii) return such Equipment to the Lessor, whereupon:

- (a) the applicable purchase order will be deemed to have terminated;
- (b) the cost and expense of such termination and return of the Equipment (including all necessary shipping, transportation and handling costs) will be borne by, and be for the sole account of, the Lessor, and
- (c) OPG may, by written notice of same to the Lessor, require the Lessor to replace such Equipment with replacement Equipment in good operating condition suitable for the purpose for which it is leased to the satisfaction of OPG, in its sole discretion, and enter into a new purchase order giving effect to the lease transaction for such Equipment on the same terms and conditions as was set out in the purchase order terminated pursuant to Section 7.2(a).

### **7.3 Acceptance**

If OPG does not notify the Lessor that the Equipment is unsatisfactory pursuant to Section 7.2 within ten days of OPG's receipt of the Equipment, OPG will be deemed to accept delivery of the Equipment on the Delivery Date.

### **7.4 Liens**

- (a) The Lessor represents and warrants that as of the date of this Contract, the Equipment is not subject to any Liens. From and after such date, the Lessor will not impose any Lien, or allow or permit any Lien to be placed, on the Equipment.
- (b) OPG will not impose any Lien, or allow or permit any Lien to be placed, on the Equipment.

### **7.5 Use and Maintenance of Equipment**

- (a) OPG will use the Equipment in accordance with this Contract, all Applicable Laws and the Operating Instructions provided to OPG by the Lessor. If required, the Lessor will maintain the Equipment on a regular basis. If the Lessor is not required to maintain the Equipment, OPG will

maintain the Equipment as specified in this Contract. Unless otherwise specified in this Contract, OPG will not make any alterations, additions or improvements to the Equipment without the Lessor's prior written consent and all such alterations, additions or improvements will remain the property of the Lessor. OPG will not cover, obscure or remove from the Equipment any nameplate, logo or other identification label or any operating instructions or safety warning.

- (b) OPG will be liable to the Lessor for loss or damage (reasonable wear and tear excepted) to the Equipment (except for the Equipment or any part thereof of sold to OPG) during the Rental Term caused solely by OPG's negligence or wilful misconduct. OPG will give the Lessor notification of any such loss or damage promptly upon OPG becoming aware of same. In the event of any such loss or damage attributable to OPG, OPG will pay to the Lessor the cost of either repairing or replacing the Equipment or portion thereof that is subject to the loss or damage.

### **7.6 Electrical Safety Approvals**

The Lessor will ensure that all electrical Equipment, before delivery, has the safety approval of the Canadian Standards Association or the electrical approval of the Electrical Safety Authority. The Lessor will arrange for such approval at its expense.

## **8 Liability**

### **8.1 Limitation of Liability**

Subject to Section 8.2, the liability of either party respecting all claims arising in respect of this Contract will not exceed an aggregate amount equal to the Contract Price.

### **8.2 Exclusions**

The Lessor's limitation of liability set out in Section 8.1 will not apply to:

- (a) the Lessor's obligations (or a breach thereof) under Sections 4.12 and 4.14;

- (b) the Lessor's indemnity obligations under Section 5.1 with respect to third party claims;
- (c) amounts recovered from insurance under this Contract, with the Lessor acting diligently in pursuit of recovery from its insurers of indemnifiable claims arising under this Contract, (or that would have been recovered had the Lessor complied with its obligations under Section 5.2) to the extent of the limits specified in Section 5.2; 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 willful misconduct by Lessor or any of its Subcontractors.

### **8.3 Consequential Damages**

Notwithstanding any other term in this Contract, except in respect of the matters set out in Section 8.2, 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.

### **9 Force Majeure**

Neither the Lessor nor OPG will be liable to the other for loss, damage or delay in the delivery of the Equipment or 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.

## **10 Acceptance and Correction**

### **10.1 Warranty**

- (a) The Lessor warrants that it has good and valid title to the Equipment and that it is duly authorized to enter into this Contract and to lease the Equipment to OPG. The Lessor further warrants that the Equipment leased and the Services performed under this Contract will: (a) be in good and safe operating condition; (b) be free from defects in material, workmanship and title; (c) comply with requirements in this Contract; and (d) be fit for OPG's purposes. OPG may reject any portion of the Equipment and Services that is not in compliance with this Contract and, at the request of OPG, the Lessor will repair, replace, correct or re-perform any such Equipment and Services by the time indicated by OPG's representative and at the Lessor's expense. The Lessor will be responsible for, as necessary, disassembling, de-installing, demobilizing, preparing for removal and removing defective Equipment or any part thereof to be repaired or replaced under this Section 10.1, at no cost to OPG.
- (b) The Lessor hereby assigns to OPG, for the Rental Term only, all assignable rights under any warranty given to the Lessor by the seller or manufacturer of the Equipment, and agrees to cooperate reasonably with OPG in the enforcement of such warranties. All proceeds of recovery on any such warranty from the manufacturer or supplier of the Equipment will first be used to repair the affected Equipment.
- (c) If at any time and from time to time following the end of the Rental Term, any part of the Equipment or Services are found to be defective, the sole liability of the Lessor and the exclusive remedy of OPG with respect to the correction of such defective part, will be limited to the warranty remedies set out in this Section 10.1, provided that nothing in this Section 10.1 will serve to limit the Lessor's liabilities or OPG's remedies otherwise provided for under



this Contract that do not pertain to the correction of such defective part.

## 10.2 Quality Program

(a) The Lessor will maintain a quality program that will assure OPG that the design, material and workmanship used in the Equipment leased and/or supplied and the Services provided under this Contract fully meet the Contract requirements. The program will conform with the ISO or CSA Z299 Quality Program Standard specified in this Contract. Any proposed alternatives to the specified ISO or CSA Z299 Quality Program will be subject to evaluation by OPG for its equivalency to specified requirements.

(b) Notwithstanding the provisions of any standard or code applicable to the Equipment and Services, the Lessor will be responsible for and will perform all inspections, testing and surveillance of the Subcontractors and the Equipment and Services necessary to ensure that the Equipment and Services meet the requirements of this Contract. OPG may perform surveillance at any time for compliance with the quality program and examine the Equipment and Services wherever situate for conformance to product quality requirements.

(c) The Lessor will make the necessary arrangements to facilitate such surveillance and examination at the Lessor's premises as well as at the premises of its Subcontractors. At least 48 hours' notice will be given to enable OPG's inspector to be present at any inspection plan/quality program hold points.

## 11 Default by the Lessor

(a) Each of the following events and circumstances constitutes an event of default by the Lessor (a "**Lessor 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 Equipment or Services as they come due;

(vii) failing to comply with statutes, laws, regulations, bylaws or directives of competent authorities relating to the Equipment or Services;

(viii) failing to perform the Services with skill and diligence;

(ix) any representation made by the Lessor 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 13.2

(xi) failing, neglecting, refusing or being unable at any time during the term to provide reasonably adequate Lessor's Personnel to perform the Services;

(xii) a change of ownership or control of the Lessor occurs without the prior written consent of OPG;

(xiii) failing or refusing to correct defective or deficient Equipment or 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 Lessor diligently and constantly endeavours to cure the breach during such extended period.
  - (b) Notice that the Lessor is in default will not be required if the default relates to the bankruptcy, insolvency or financial instability of the Lessor. Other than defaults arising from Sections 11(a)(i), (ii) and (iii), OPG will provide the Lessor with ten days written notice.
  - (c) If the Lessor is in default under this Contract, 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, and Equipment then at the Site (at no additional charge for the retention or use of the material, supplies and Equipment);
    - (ii) eject and exclude from the Site the Lessor, any Subcontractors and any of the Lessor's Personnel;
    - (iii) suspend, in whole or in part, the Lessor's provision of Equipment or Services under this Contract;
    - (iv) finish the Services by whatever means it may deem appropriate under the circumstances (and the Lessor, 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 Equipment stored at the Site or for which OPG has paid the Lessor but which are stored elsewhere; and/or
  - (vi) withhold, without interest, all payments, in whole or in part, to the Lessor under any agreement between OPG and the Lessor until the Lessor's liability to OPG is determined.
- Unless OPG otherwise directs, the Lessor will cooperate with the exercise of OPG's recourse under this Section 11, including by, if directed by OPG, (i) discontinuing the Services, (ii) ceasing to place orders for Equipment, (iii) making every effort to cancel existing orders on terms satisfactory to OPG, (iv) protecting the Lessor's property and Equipment, (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 11.
- (d) Any action by OPG under this Section 11 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 Lessor.
- 12 Suspension and Termination**
- 12.1 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 Lessor.

- (b) Immediately following a notice of resumption delivered by OPG to the Lessor, the Lessor will resume providing the Services. In the event that a suspension pursuant to this Section 12 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 12.3 and the provisions of Section 12.3 will apply to such termination.

## 12.2 Termination for Cause

- (a) OPG may terminate this Contract immediately and without any cost to OPG by delivering a notice to the Lessor on the occurrence of a Lessor Event of Default.
- (b) If OPG terminates this Contract under Section 12.2(a) or exercises its rights under Section 11(c), the Lessor will be liable to OPG for:
  - (i) the extra expense of finishing or replacing the Equipment or 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 Equipment or Services performed by the Lessor;
  - (iii) all other loss, damage and expense occasioned to OPG by reason of the Lessor's default; and
  - (iv) applicable sales taxes.
- (c) If any time after OPG terminates this Contract under Section 12.2(a), it is determined for any reason that a Lessor 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 12.3.

## 12.3 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 or undelivered Equipment, in whole or in part, by delivering a notice to this effect to the Lessor. The parties hereby acknowledge and agree that in the event OPG terminates this Contract in accordance with its terms, the Lessor will:
  - (i) reimburse OPG forthwith for any portion of the Contract Price paid to the Lessor for Services or Equipment not yet provided up to and including the date of termination of this Contract; and
  - (ii) be deemed to have waived its right to receive the balance of the Contract Price that it has not yet received as of the date of termination of this Contract (other than for 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 Lessor Event of Default or any fraud, negligent or wilful act or omission of the Lessor or a Subcontractor, OPG will pay the Lessor 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 Lessor 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. Before OPG pays the Lessor for such extra direct damages, the Lessor will provide to OPG such reasonable evidence of such damages as OPG may request.

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

#### **12.4 Orderly Transition**

On any termination of this Contract under this Section 12, the Lessor 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 caused by the termination are minimized.

### **13 General**

#### **13.1 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.

#### **13.2 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 Lessor 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.

#### **13.3 Notices**

Notices to OPG and the Lessor 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.

#### **13.4 Publicity**

The Lessor 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.

#### **13.5 Former OPG Employees**

The Lessor acknowledges that OPG's policies restrict the involvement of certain individuals in OPG contracts. The Lessor will disclose in writing to OPG the names of individuals who the Lessor 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 Lessor of any restrictions within a reasonable period of time. The Lessor 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.

### **13.6 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.

### **13.7 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.

### **13.8 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 4.5

### CYBER SECURITY

#### 1.1 **Certain Definitions.** For the purposes of this Schedule 4.5:

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

#### 1.2 **Cyber Security Requirements.** The Lessor:

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

- (c) will notify OPG by sending an email to [sccs@opg.com](mailto:sccs@opg.com) within 48 hours after discovering any security breach, incident or vulnerability impacting or otherwise involving OPG Systems and Information (including any Cyber Equipment if the Lessor, acting reasonably, believes any such security breach, incident or vulnerability may have impacted or may potentially impact OPG Systems and Information), and furthermore if such security breach, incident or vulnerabilities relates to any Cyber Asset, Cyber Equipment, or Cyber Service, the Lessor 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 Lessor's Personnel with a unique user identification (ID) to access OPG Systems and Information ("**Designated Named Account(s)**") will: (i) ensure only the Lessor'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 Lessor's Personnel; and (iii) notify OPG immediately after becoming aware of a decision to terminate or re-assign any of the Lessor's Personnel who OPG provided Designated Named Account(s) to, to allow OPG to revoke such Lessor's Personnel's access on a timely basis;
- (f) if OPG provides the Lessor with a generic user identification (ID) to access OPG Systems and Information ("Generic Account"), will: (i) ensure only the Lessor'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 Lessor's Personnel; (iii) periodically change the password for the Generic Account; and (iv) notify OPG immediately after becoming aware of a decision to terminate or re-assign any of the Lessor'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 Lessor-initiated interactive remote access or system-to-system remote access) is required to access OPG Systems and Information, will: (i) only use those internet protocol (IP) addresses, ports, and minimum privileges required for the remote access as mutually agreed by the parties; (ii) only use Designated Named Account(s); and (iii) in case of system-to-system connections that may limit OPG's capability to authenticate the personnel connecting from the Lessor's systems, maintain complete and accurate books, user logs, access credential data, records, and other information applicable to connection access activities for the entire term of this Contract;
- (h) will ensure that OPG Data is properly safeguarded; and
- (i) if the Lessor is required by OPG to dispose of OPG Systems and Information, will ensure that: (i) the disposal is done securely and in a timely manner and in compliance with Applicable Laws; and (ii) if the Lessor retains any OPG Data created on the Lessor's computer systems by its normal back-up procedures, the Lessor: (a) has restricted access to any backed-up OPG Data; (b) does not intentionally attempt to recover such OPG Data, unless required by Applicable Laws; and (c) if the Lessor does recover any

such OPG Data (including as a result of a disaster recovery procedure), the Lessor will immediately dispose of such OPG Data, unless required by Applicable Laws, provided that if the Lessor is required by Applicable Laws to recover or disclose any such OPG Data, the Lessor will: provide OPG prompt notice of such requirement and the details thereof so that OPG may challenge such requirement or seek an appropriate protective order; consult with OPG on the advisability of taking legally available steps to resist or narrow such requirement; disclose only such OPG Data as is required by Applicable Law; and use best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such OPG Data.

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

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



**SCHEDULE 6.7**

**CHANGE ORDER FORM**

<b>To:</b> •	Contract: • (the “ <b>Contract</b> ”) 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 6.7 of the Contract, OPG hereby directs the Lessor 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:

1. [•]

**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:

**[LESSOR]**

By: \_\_\_\_\_  
Name:  
Title: