1 Interpretation

1.1 Definitions

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

(a) “Actual Delivery Date” means the date on which the Equipment is received by OPG at the stipulated delivery point.

(b) “Contract” has the meaning given to it in section 1.3(a).

(c) “Contract Price” means the total of any stipulated sums for the Work (or any portion thereof) set forth in this Contract, as amended by any instruction notice.

(d) “Equipment” means all materials, machinery, assemblies, instruments, devices or articles, parts and related components to be supplied 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 items to be supplied, together with all related upgrades, updates, modifications and enhancements to be supplied.

(e) “In-service Date” means the day on which the Equipment is first put into service in the OPG project of which it forms a part and is provisionally accepted by OPG’s Representative, subject to the Supplier’s continuing obligations under this Contract.

(f) “Inspector” means the person designated from time to time by OPG to monitor the application of the quality program, examine the Work and expedite the delivery of the Work.

(g) “Intellectual Property Rights” means any rights in or to a Canadian or foreign patent, patent application, utility model, inventor’s certificate, copyright, moral right, trade-mark, trade name, Internet domain name, service mark, trade secret, know-how, confidential information, mask work or integrated circuit topography, industrial design or other intellectual property rights of any kind, whether registered or unregistered.

(h) “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.

(i) “OPG’s Representative” means the person designated from time to time by OPG to exercise such power, authority or discretion as is required of such person under this Contract.

(j) “Subcontractor” means a person, firm or corporation (including the person’s, firm’s or corporation’s heirs, executors, administrators, personal and legal representatives, successors and
permitted assigns) who supplies or performs any of the Work under an agreement with the Supplier, another Subcontractor or a combination of the Supplier and another Subcontractor.

(k) “Supplier” means the party contracting with OPG under this Contract.

(l) “Supplier’s Personnel” means all personnel used by the Supplier or assisting the Supplier in the provision of Work, including any personnel, staff, labour and other employees of the Supplier or a Subcontractor and any Subcontractor who is an individual.

(m) “Take-over Date” means the day on which the Work, having been completed and made ready for use, is provisionally accepted by OPG’s Representative, subject to the Supplier’s continuing obligations under this Contract.

(n) “Work” means all labour, materials, Equipment, structures, services, supplies, drawings and data and acts required to be supplied or performed by the Supplier under this Contract, including all packaging, inspection, shipping, handling, delivery and other incidental services required to supply the Equipment to the designated location in the prescribed manner.

1.2 Expanded Definitions

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including without limitation”, and the terms “include”, “includes” and “included” have similar meanings. The term “will” means “shall”. When words that have a well-known technical or trade meaning are used in this Contract, such words will be interpreted in accordance with that meaning. References to standard delivery arrangements will be interpreted in accordance with the Incoterms 2010.

1.3 Contract Documents and Order of Precedence

(a) This “Contract” consists of: (i) the purchase order; (ii) these standard commercial terms; and (iii) the other documents delivered to the Supplier in respect of OPG’s request for the supply or performance of the Work.

(b) These documents take precedence in the order in which they are named above. Schedules, appendices and addenda referred to in, or forming part of, these documents will be considered part of such document.

(c) These documents are subject to subsequent amendments to this Contract, in the form of instruction notices to the purchase order, or purchase order revisions, which will take precedence over the documents amended thereby.

(d) No agent, employee or other representative of OPG has authority to make any promise, agreement or representation not incorporated into this Contract, and no promise, agreement or representation will bind OPG unless so incorporated.

(e) This Contract and the Work required thereby will be interpreted to include all Work reasonably required to provide a project result that is fit for OPG’s purposes. Where this Contract sets forth design or performance descriptions or criteria, such descriptions and criteria will be considered part of OPG’s specifications to the extent that they enhance the requirements of such specifications.

1.4 Governing Law

This Contract and the conduct of the parties with respect to the formation and performance of this Contract are governed by and are to be construed and interpreted in accordance with the laws of Ontario and the laws of Canada applicable in Ontario. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario and the Federal Court of Canada.

1.5 Language and Units of Measure

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

2 Supplier’s Obligations

2.1 Codes of Conduct

The Supplier will:

(a) not take any action that would cause OPG or any of its directors, officers, employees, agents or representatives to be in breach of any of the obligations set out in OPG’s Code of Business Conduct (“COC”); and

(b) comply with all of the obligations and be aware of potential consequences set out in OPG’s Supplier Code of Business Conduct (“SCOC”).

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

2.2 Supplier Labour Obligations

The Supplier will comply with all labour obligations set out in Schedule 2.2. The Supplier will indemnify and hold harmless OPG, its subsidiaries, its affiliated companies and their respective officers, directors, employees and agents from and against any and all Losses suffered or incurred by OPG, its subsidiaries, its affiliated companies and their respective officers, directors, employees and agents in connection with claims made or grievances filed by any unions in connection with any breach by the Supplier of the obligations set out in Schedule 2.2 in the
course of providing the Work or in connection with other non-unionised labourers providing part of the Work.

2.3 Permits, Laws and Regulations

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

2.4 Anti-Bribery and Corruption

The Supplier will comply with, and will take all reasonable measures to ensure that the Supplier’s Personnel or other third parties subject to its control or determining influence will comply with, all applicable anti-corruption laws and policies, including the Foreign Corrupt Practices Act (U.S.), the Corruption of Foreign Public Officials Act (Canada), the Bribery Act (U.K.) and any applicable laws of similar effect of any other jurisdiction (collectively “Anti-corruption Laws”). The Supplier represents, warrants and undertakes that it has instituted and maintains policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance with Anti-corruption Laws. The Supplier will permit OPG, upon OPG’s request to: (i) review its policies and procedures described in this section 2.4; and (ii) audit all records of theSupplier related to the Work for the purpose of verifying compliance with the Anti-corruption Laws.

2.5 Cyber Security

For the purposes of this section:

“Cyber Deliverables” means (i) any computing hardware, software or other computing or information technology provided by the Supplier that (a) has the ability to impact the availability, integrity, or confidentiality of OPG Systems and Information, and (b) may form part of, may be connected to, or may be used to access OPG Systems and Information; or (ii) any application, infrastructure, or project services provided by the Supplier in relation to (i); except in respect of (i) and (ii) where OPG has expressly stated in this Contract that a particular technology or service to be provided by the Supplier is not a Cyber Deliverable for the purposes of this Contract.

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

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

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

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

(a) represents and warrants to OPG that (i) the Supplier has established and maintains a cyber security program designed to ensure the availability, integrity and confidentiality of Cyber Services (the “Supplier Cyber Security Program”); (ii) the Supplier has implemented and maintains written cyber security policies designed to ensure security assurance in relation to Cyber Services; and (iii) as part of the Supplier Cyber Security Program, the Supplier’s Personnel delivering the Cyber Services are provided and required to attend position-appropriate cyber security training;

(b) will ensure that where OPG provides specified individuals who are the Supplier’s Personnel with a user ID to access OPG Systems and Information (“Designated Named Account(s)”) (i) only those individuals designated by name may use the Designated Named Account(s); (ii) the Designated Named Account(s) are not shared with any other individual or entity; and (iii) the Supplier notifies OPG immediately as soon as becoming aware of a decision to terminate or re-assign any of those individuals to which a Designated Named Account is assigned to allow OPG to remove such Supplier’s Personnel’s access on a timely basis;

(c) will provide to OPG (i) documentation that describes the cyber security features, and wireless or remote networking capabilities of the Cyber Deliverables; and (ii) cyber security-focused instructions, including manuals, for the maintenance, support and reconfiguration of the Cyber Deliverables, and recommendations for hardening of the Cyber Deliverables and, as applicable, OPG Systems and Information;

(d) will notify OPG, as soon as technically feasible, after becoming aware of any identified security breaches, incidents or vulnerabilities impacting or otherwise involving (i) any Cyber Deliverables that have been supplied or are to be supplied; (ii) the supply chain of any such Cyber Deliverables; or (iii) any Cyber Equipment where, in the case of (iii), the Supplier, acting reasonably, believes any such security breaches, incidents or vulnerabilities may have impacted or may potentially impact OPG Systems and Information. The notification will include a description of the breach, incident or vulnerability, its potential security impact, the Supplier’s remediation plan, and recommended mitigating or corrective actions;

(e) will provide to OPG appropriate patches and/or updates to remediate any security vulnerabilities in the Cyber Deliverables on a timely basis, disclose to OPG its mechanisms to deliver patches such as checksums, digital signatures or other means of identification for all software, patches and
configuration files, and ensure its controls will enable OPG to verify the authenticity and integrity of the patches delivered through these mechanisms;

(f) will use tamper-evident packaging when supplying to OPG any computing hardware and, at OPG’s request, will provide copies of any documentation to show the chain-of-custody for such hardware;

(g) will ensure that (i) no contaminants, including viruses, worms, Trojan horses, adware, spyware, trackware, hack tools, diallers, joke programs, time locks or other software routines, codes or instructions of a similar nature are placed on, or allowed access to, any OPG Systems and Information by any Supplier’s Personnel in connection with any Cyber Services; and (ii) that any Cyber Deliverables, any computing hardware, software comprising the Cyber Deliverables, and any Cyber Equipment are properly tested, including through the use of malware scans, to identify and correct or mitigate any cyber security weaknesses and vulnerabilities;

(h) will use security best practices in the development of Cyber Deliverables and ensure that (i) there are no hardcoded passwords in the Cyber Deliverables; (ii) there are no accounts or known methods that are able to bypass authentication in the Cyber Deliverables, unless the Supplier has made OPG aware of, and OPG has accepted in writing, such accounts or methods in the Cyber Deliverables; and (iii) the most critical application security weaknesses are addressed in the Supplier’s system development life cycle (the Supplier should refer to applicable standards, such as the SANS Top 25 Most Dangerous Software Errors, the OWASP Top 10, or their successors);

(i) will ensure that (i) OPG-specific data is adequately protected; and (ii) if the Supplier is required by OPG in compliance with applicable law to dispose of OPG information or computing equipment containing OPG information, the disposal of OPG information is done completely and securely; and

(j) will promptly collaborate and coordinate with OPG in incident response activities involving OPG Systems and Information where the incident relates to the Cyber Services.

2.6 ISNetworld

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

2.7 Workplace Safety and Insurance Board

The Supplier will provide their Workplace Safety and Insurance Board account number to OPG before commencing Work at the site. The Supplier 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 Supplier will submit a clearance certificate from the Workplace Safety and Insurance Board as to the Supplier’s status and that of all Subcontractors that will be providing Work at the site.

2.8 Delivery of the Work

(a) Title to the Equipment will be transferred to OPG upon delivery free and clear of encumbrances of any nature.

(b) Time will be material and of the essence for this Contract.

(c) The Supplier will be responsible for arranging its design, manufacturing and shipping schedules so that the Equipment will arrive at the stipulated destination in accordance with the delivery schedule specified in the purchase order.

(d) In the event of a delay or default in performance by the Supplier, OPG may at its discretion extend the time period for performance, upon conditions satisfactory to OPG. Alternatively, in such event and notwithstanding section 8.1, OPG may terminate this Contract in whole or in part, without any further obligation of any nature to OPG, receive a refund of the corresponding amounts paid to the Supplier and seek satisfactory performance by alternative suppliers. Any extension granted by OPG will not prejudice its ability to exercise its termination rights in the event of further delay or default.

2.9 Shipping and Packaging Instructions

(a) Insofar as transportation terms will allow, the Equipment will be shipped complete and ready for installation. Should the size of the Equipment prevent it from being shipped fully assembled, the Supplier will segregate the Equipment into components to allow for safe and convenient transportation.

(b) The receipt or taking delivery by OPG’s Representative of any Equipment, in whole or in part, will not be deemed a waiver of any right, claim or remedy of OPG under this Contract or otherwise.

(c) All Equipment will be packed, braced and loaded in such a manner as to prevent physical damage and damage from marine and climatic conditions. Equipment requiring special precautions during shipping and storage will be clearly marked on the outside of the shipping container with specific instructions included in a durable envelope attached to the container and suitably labelled. All openings in Equipment such as vessels, valves and pumps will be sealed. Where necessary, skids, hauling eyes, jacking plates and slinghooks will be provided for unloading and field assembly. Where pallets are required for shipping purposes, OPG will be notified before shipping. OPG will provide metal pallets to the Supplier for shipping purposes. The Supplier will be liable for any pallets lost or damaged by the
Supplier. Where wood pallets are used for any shipment, the wood pallets will be returned to the Supplier at their expense.

(d) The Supplier is responsible to reduce or eliminate packaging. The Supplier will identify opportunities to reduce or eliminate packaging, use metal cages provided by OPG or use packaging returnable to the Supplier.

(e) All cages, packages, boxes, crates, bundles, unpackaged components and bills of lading will be clearly and indelibly marked to show necessary shipping information. Markings will be applied by a method suitable to the type of product and packaging involved and will provide the following information:

   (i) destination address and OPG’s purchase order number;

   (ii) material code number and other identifications specified in the purchase order;

   (iii) the Supplier’s shipment identification number, numbering of packages, boxes, crates, components, or assemblies of the shipment; and

   (iv) the mass and sizes of each major component or assembly (if the lifting points are critical, they will be clearly marked and identified).

(f) A detailed packing slip, listing each separate item, will be enclosed in a waterproof envelope and firmly attached to each shipping container. The Supplier’s return shipping account number and carrier name will be included on the packing slips of all Equipment delivered to OPG, to be used by OPG at OPG’s sole discretion, to return any overshipment or Equipment not in conformance with the requirements of this Contract.

(g) As soon as a shipment is ready for dispatch, a duplicate copy of the packing slip will be faxed, emailed, electronic file transferred or mailed to the packing slip mailing address specified elsewhere in this Contract.

(h) Where applicable, the Supplier will be responsible for obtaining any permits required for transportation to the Equipment installation site.

2.10 Overshipments and Other Non-Conformance

Equipment not ordered, including excess quantities, or not in conformance with the requirements of this Contract will be subject to rejection and may be returned by OPG at the Supplier’s expense without any need to obtain prior authorization from the Supplier. The cost of handling, packaging and transporting such Equipment for return will be solely to the Supplier’s account.

2.11 Communications

The Supplier will reference OPG’s project name, Equipment description and purchase order number in all communications with OPG.

2.12 Hazardous Materials

The Supplier when shipping to any OPG site any product which is categorised as a hazardous material (i.e., compressed gas, flammable or combustible material, oxidising material, poisonous and infectious material, corrosive material or dangerously reactive material) will comply with relevant federal and provincial legislation and regulations pertaining to such materials. The Workplace Hazardous Material Information System (“WHMIS”) will apply and all such materials will be properly identified with WHMIS type warning labels. All shipments of such material to OPG sites will include a Material Safety Data Sheet (“MSDS”). Where the delivery point is a nuclear site, a copy of the MSDS will also be sent to: The MSDS Centre, OPG, Safety Services Department, 1549 Victoria Street East, Whitby, Ontario, L1W 3C7, Attn: Technical Information Services, Unit Head.

2.13 Subcontractors

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

2.14 Intellectual Property

(a) Both parties retain all Intellectual Property Rights to methodology, knowledge and data brought to the Work and used therein. No Intellectual Property Rights existing before the start of the Work are passed hereunder other than licences and rights to use Intellectual Property Rights as set out in this Contract. The Supplier will pay all royalties, licence fees and other monetary amounts required in respect of Intellectual Property Rights associated with the Work.

(b) All title and beneficial ownership interests to all Intellectual Property Rights which arise in respect of the Work will vest exclusively in, and remain with, OPG. The Supplier will not do any act which may compromise or diminish OPG’s ownership rights and will perform any acts required to confirm or document OPG’s ownership rights set out in this section 2.14, including obtaining assignments of rights from any of the Supplier’s Personnel.
(c) The Supplier confirms that it owns or has obtained from third parties, duly authorised grants of all right, title and interest necessary to provide to OPG a licence regarding the Intellectual Property Rights associated with the Work in the manner set out in this Contract including waivers of moral rights for the benefit of OPG. In respect of any Intellectual Property Rights not vested in OPG under section 2.14(b) above, the Supplier grants to OPG a worldwide, non-exclusive, irrevocable, perpetual, royalty free and fully paid-up licence and uninterrupted right to use all such Intellectual Property Rights that are contained or embedded in, required for the use of, used in the production of, or required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work. The rights granted under this paragraph include a right for OPG to: (i) make copies; (ii) modify and create derivative works from the subject matter of the right; and (iii) assign, sublicense and transfer rights granted under this paragraph, in whole or in part, to any third party.

(d) The Supplier will, at its expense, defend all claims, actions or proceedings against OPG relating to or based on any allegation that the Work, or any part of the Work, constitutes an infringement upon, or a misappropriation of any Intellectual Property Rights and will pay to OPG all resulting Losses incurred by OPG. OPG will give the Supplier written notice of any such claim, action or proceeding and, at the request and expense of the Supplier, provide all available information, assistance and authority required to conduct its defence.

(e) If all or any part of the Work is finally determined to constitute an infringement or misappropriation of Intellectual Property Rights of a third party, or if OPG is enjoined from using any of the Work or Intellectual Property Rights embodied therein as a result of an infringement or misappropriation claim, the Supplier will at its expense promptly: (i) obtain for OPG the right to continue using the Work; (ii) replace the infringing elements of the Work with non-infringing elements, while maintaining the full functionality, integrity and performance capabilities of the Work; or (iii) modify the Work so that it no longer infringes, while maintaining the full functionality, integrity and performance capabilities of the Work.

2.15 Authorised Distributor/New Product Representation

The Supplier confirms that it is duly authorised by the manufacturer of the Equipment to distribute the Equipment 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 Equipment 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.

2.16 Unsafe Work

If OPG determines in its sole discretion that any employee or other individual used by the Supplier or a Subcontractor acted in an unsafe manner on site (including by failing to take an action required for safety reasons), OPG may require the Supplier to have such individual removed immediately from the site for such period of time as OPG determines. OPG will not be responsible for any additional costs or expenses as a result of having any individual removed from a site.

2.17 Confidential Information

(a) Definition of Confidential Information. In preparation for and in the course of performing all Work, OPG will disclose to the Supplier and the Supplier may come into contact with certain information which is confidential, a trade secret or otherwise proprietary to OPG (the “Confidential Information”). Confidential Information does not include information that the Supplier is able to demonstrate to OPG’s satisfaction, acting reasonably: (i) was or becomes generally known to the public through no fault of the Supplier, its Subcontractors or any of their respective directors, officers, employees, agents, consultants, advisors and other representatives; or (ii) was specifically known by the Supplier before disclosure by OPG (as evidenced by Supplier’s written records) and was not subject to any confidentiality obligation.

(b) Application of Freedom of Information and Protection of Privacy Act (Ontario). The Supplier expressly acknowledges that OPG is subject to the Freedom of Information and Protection of Privacy Act (Ontario), as amended (“FIPPA”) which may require the disclosure of records to third parties. All obligations of OPG under this Contract are subject to FIPPA, despite any other term in this Contract.

(c) Ownership and Treatment of Confidential Information. All Confidential Information and all Intellectual Property Rights embodied therein remain, at all times, the exclusive property of OPG. The Supplier will not use any Confidential Information except for the purpose of performing the Work under this Contract. The Supplier will not disclose or otherwise permit access to the Confidential Information to any third party other than its Subcontractors who have a need to access the Confidential Information for the purposes of providing the Work under this Contract to OPG, provided that the Supplier compels each such Subcontractor to agree to abide by the provisions of this Contract. The Supplier agrees that OPG has not granted the Supplier any license to OPG’s Intellectual Property Rights in the Confidential Information under this Contract.
(d) **Return of Confidential Information.** On OPG’s instructions, the Supplier will promptly return to OPG or destroy any and all Confidential Information, including all reproductions and any documents based on any of the Confidential Information, and will not retain any copies thereof.

(e) **Remedies.** The Supplier acknowledges that OPG would not have an adequate remedy at law for money damages if the Supplier fails to fulfill any of its obligations under this section 2.17. Accordingly, in addition to any other remedies under this Contract, OPG will be entitled to 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 2.17 and in which case, the Supplier consents to any such injunction, specific performance or other remedy in law or equity.

2.18 Operating Instructions and Parts and Service Manuals

(a) Unless the Work consists solely of the supply of parts or as otherwise specified in this Contract, the Supplier will supply for all Equipment, operating instructions and parts and service manuals in loose-leaf and/or electronic form of manuals containing complete operating instructions, maintenance and servicing instructions (including the names of recommended lubricants and routine lubrication procedures), and parts catalogues, together with any drawings in reduced size which are necessary to aid in the understanding of the instructions. The number of copies and/or format will be stipulated in this Contract.

(b) Draft copies of the manuals in the format stipulated will be submitted to OPG’s Representative for approval for use not later than six months (or such lesser period as may be requested by OPG’s Representative in writing) before the scheduled date of first delivery of the Equipment. The required number of copies of the manuals, as approved for use, will be delivered with the first delivery of the Equipment.

(c) All documents required under this section 2.18 will be furnished by the Supplier at no additional cost to OPG. Failure to deliver the manuals as required will entitle OPG to withhold payments.

2.19 Substitutions

The Supplier may not make substitutions (if different from the original designed and tested components supplied, specifications, drawings or data) without written acknowledgement and consent from OPG.

2.20 Recommended Spare Parts

The Supplier will provide, upon request by OPG, a complete list of all spare parts which the Supplier would normally purchase from outside sources, showing the Supplier’s part number and the true manufacturer’s name and part number for each item.

2.21 Delivery of Counterfeit, Fraudulent and Suspect Items

The Supplier will not use or deliver counterfeit, fraudulent and/or suspect items (“CFSI”) while providing Work to OPG. If any items under this Contract are described using a manufacturer part number, a product description and/or specified using an industry standard, the Supplier will ensure that the replacement items supplied under this Contract meet all requirements of the latest version of the applicable manufacturer data sheet, description and/or industry standard. If the Supplier is not the manufacturer of the items, the Supplier will ensure that the items 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 Supplier desires to supply or use an item that may not meet the requirements of this section 2.21, the Supplier will notify OPG of any exceptions and receive OPG’s written approval prior to shipment or use of such item. If CFSI are furnished under this Contract or are found in any of the Work provided under this Contract, such items will be dispositioned by OPG and may be returned to the Supplier. The Supplier will promptly replace such CFSI with items acceptable to OPG and the Supplier will be liable for all costs, including OPG’s internal and external costs relating to the removal and replacement of such items.

2.22 Security Check

OPG may, from time to time, perform a security clearance check, consisting of a criminal record check that may require fingerprints, a reliability check, and an employment and education verification for each of the Supplier’s Personnel and, where required for nuclear site access security clearance, a credit check. Upon request by OPG, the Supplier will, at no cost to OPG, submit to OPG’s Representative the information required by OPG for each of the OPG identified Supplier’s Personnel. The information that OPG requires, such as photographic identification, birth certificate and citizenship card, may vary from individual to individual, depending on the individual’s background and circumstances. OPG may require, prior to starting work with OPG, that the Supplier’s Personnel complete OPG forms for security clearance, including a five year, or more, residence and work history. If any of the Supplier’s Personnel have resided or worked in, or travelled to a country other than Canada, for more than six months cumulative, they may be required to supply criminal record name checks from each country to which that applies. OPG may require that such Supplier’s Personnel provide further information, including references or education credentials. OPG may require any supporting documentation to be verified in a manner established by OPG, including by notarising. If OPG determines that any of the Supplier’s Personnel is unsuitable for any reason, or if OPG is not satisfied with the timeliness, accuracy, validity, adequacy or
completeness of any of the information received by OPG, then the Supplier will ensure that the applicable Supplier’s Personnel is replaced immediately, at no cost to OPG. OPG will maintain all the information submitted to OPG under this section 2.22 in accordance with applicable laws.

2.23 Supplier Pre-Start Health and Safety Reviews

If any of the Equipment being purchased consists of, or incorporates, any of the following:

(a) safeguarding devices that signal the apparatus to stop;
(b) barrier guards that use interlocking mechanical or electrical safeguarding devices;
(c) racking or stacking structures;
(d) a process that involves a risk of ignition or explosion that creates a condition of imminent hazard to a person’s health or safety; or
(e) lifting devices, travelling cranes or automobile hoists,
then the Supplier will provide the documentation necessary to exempt the Equipment from a pre-start health and safety review as required by section 7 of regulation 851 made under the Occupational Health and Safety Act (Ontario). The Supplier will supply this documentation to OPG within 30 days of the date of this Contract.

2.24 Drawings and Data

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

(a) unless otherwise authorised in writing by OPG’s Representative, any part of the Work to be performed in accordance with any drawings and data, whether prepared by the Supplier or OPG, will not be commenced until OPG’s Representative has approved the use of such drawings and data (including schedules, procedures and other pertinent information). Approval or acceptance by OPG’s Representative of the Supplier’s drawings and data will in no way construe or imply relief of the Supplier from its responsibility for any error or omission therein or from any obligation under this Contract or implied by law;

(b) OPG’s drawings and specifications will be deemed to be complementary so that if anything is shown on the drawing but not mentioned in the specifications, or vice versa, it will be furnished and built as though specifically set forth in both. In case of conflict between the specifications and the drawings, the specifications will govern;

(c) all of the drawings and data prepared by the Supplier under this Contract will be prepared in accordance with OPG’s drawing standards, copies of which are available upon request. For the purposes of ready identification, the Supplier will ensure that each drawing and item of data will show the OPG project name and OPG’s purchase order number;

(d) within such time as stated elsewhere in this Contract, the Supplier will supply all drawings and data necessary for a thorough understanding of the Equipment; and

(e) drawings belonging to OPG are Confidential Information as per section 2.17 of this Contract.

3 Indemnity and Insurance.

(a) **Indemnity.** The Supplier will indemnify, defend and hold harmless OPG, its subsidiaries, its affiliated companies and their respective officers, directors, employees and agents from and against any and all Losses arising out of bodily and personal injury, including death, and damage to property, to the extent caused by the negligence or wilful misconduct of the Supplier, its officers, directors, employees, contractors, agents or those for whom any of them are in law responsible.

(b) **Insurance.** The Supplier will maintain at its own expense, at all times during the term and any extension of this Contract, the following insurance with reputable insurers whose policies are valid in the jurisdiction in which the Services are performed:

   (i) commercial general liability insurance on an occurrence basis, including contractual liability, products liability and completed operations liability, with minimum limits of not less than $5,000,000 per occurrence, covering bodily and personal injury, including death, and property damage, including resulting loss of use. Such policy will contain severability of interests and cross liability clauses and will name OPG as an additional insured with respect only to liability arising from the operations of Supplier;

   (ii) if motor vehicles are used by the Supplier in the performance of this Contract, automobile liability insurance covering all owned and non-owned vehicles with a limit of not less than $1,000,000; and

   (iii) 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.

If not already available in ISNetworld, upon execution of this Contract, and upon OPG’s reasonable request thereafter, the Supplier will provide OPG with evidence of the required insurance in the form of certificates of insurance which will be sent to the contact person specified in the applicable purchase order. The Supplier will ensure that all such policies will require that insurers
endeavour 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) Unless progress or milestone payments are specified in this Contract, the Contract Price may be invoiced upon delivery of the Equipment to the stipulated destination. OPG will not be obliged to accept deliveries made more than one month ahead of this Contract’s delivery dates without its prior written consent.

(b) This Contract will indicate the scheduled commencement of progress or milestone payments, the number of instalments and the applicable intervals of payment. OPG will aggregate all outstanding invoices received and approved by OPG for payment before the 25th of each month. Subject to any withholdings required by law, statute or regulation, OPG will pay the Supplier this aggregate amount on the 25th day of the following month or following business day if the 25th day falls on a non-business day of the following month. All payments are conditional on receipt and acceptance of Work before the date payment is made. In addition, OPG may withhold any payment if there remain outstanding any unresolved non-conformance issues.

(c) The Supplier acknowledges that OPG has implemented an electronic invoicing system such as ARIBA or other similar system as OPG may designate (the “EIS”) and the timely payment of amounts owing to the Supplier requires that the Supplier provide invoicing information in accordance with this system. The Supplier will set up the preliminary invoicing information on the EIS promptly following the date of this Contract. The Supplier will be responsible for maintaining access to the internet, and for the accuracy and timeliness of the data entered into the EIS. OPG will not be responsible for any delays to payments as a result of the Supplier’s errors and omissions arising from the misuse of the EIS. The parties agree to work cooperatively to minimize each other’s costs associated with the implementation and ongoing access and use of the EIS. The Supplier is aware and accepts that OPG will review, accept and approve of the Supplier’s data submitted via the EIS prior to any issuance of payment. Nothing in this section 4.1(c) diminishes or amends OPG’s rights set out in the remainder of this Contract. If the Supplier is located in Canada, OPG will make all payments by electronic funds transfer. The Supplier will deliver to OPG suitable electronic funds transfer instructions from time to time.

(d) Progress payments are conditional upon the Supplier carrying out its obligations and making satisfactory progress in the performance of the Work. OPG will have the right to determine whether or not progress is satisfactory. The withholding of any progress or milestone payment under this section 4.1 will not be cause for delay in delivery, in lieu or diminution of any other right of OPG under this Contract. OPG will have a lien or first charge upon the Work in the amount of all payments made in respect thereof to the Supplier. As a condition precedent to becoming entitled to payments, the Supplier may be required to execute security documentation and obtain postponements of other securities as may be reasonably necessary to effect such lien or first charge in OPG’s favour.

(e) OPG will have the right to withhold from any sum otherwise payable to the Supplier such amount as may be sufficient in OPG’s Representative’s opinion to remedy any defect or deficiency in delivered Equipment pending correction of the same.

(f) Title of the Work will transfer to OPG proportionate to progress or milestone payments made.

(g) No payment made by OPG under this Contract and no use of the Equipment or other elements of the Work, in whole or in part, by OPG will constitute acceptance of any part of the Work that is not in accordance with this Contract.

4.2 Taxes and Duty

(a) Goods and Services Tax/Harmonized Sales Tax. Canadian Goods and Services Tax (“GST”) / Harmonized Sales Tax (“HST”), if applicable, will be shown as extra and the Supplier’s invoice will identify their 15 digit registration number for purposes of Part IX of the Excise Tax Act (Canada).

(b) Supplier’s Income Taxes. OPG will have no liability for any of the Supplier’s income or capital taxes imposed by any governmental authority respecting this Contract.

(c) Duty. The Contract Price will be subject to adjustment for any new customs duties, or for any change in the rate of any applicable customs duty. Adjustments will be based upon the difference between the rate of the customs duties at the date of this Contract and the rate in effect at the date of importation. OPG will have the right to effect an adjustment to the Contract Price for any decrease in any applicable customs duties based on its estimate of the value of foreign content if factual data is not provided by the Supplier on request. Any additional duties, interest, penalties or sales taxes imposed by Canada which are attributable to either dumping duties or change in the value for duty will in all events be solely to the Supplier’s account.

(d) Refund of Duty. The Supplier will co-operate with OPG in applying for and obtaining a refund of any duties or taxes paid by the Supplier or its Subcontractors on any portion of the Work before the refund period expires. The Supplier will require similar co-operation from its Subcontractors. If OPG
is the Importer of Record, all amounts received by the Supplier or its Subcontractors by way of such refund will constitute trust monies to which OPG is exclusively entitled and will be forwarded to OPG forthwith.

(e) Importer of Record.

(i) Where the delivery point is outside Canada, OPG will be the Importer of Record for customs purposes.

(ii) Where the delivery point is within Canada, should any portion of the Equipment be manufactured or fabricated outside of Canada, the Supplier or its agent or representative will be the Importer of Record for customs purposes for that portion of the Work.

(iii) If for any reason import documentation provided by the Supplier is incorrect, any further duties, interest, penalties or taxes imposed by any governmental authority will be solely to the Supplier’s account.

4.3 Contract Price

(a) Unless otherwise indicated in this Contract: (i) all monetary amounts are stated in Canadian funds; (ii) the Contract Price includes all activities required to supply or perform the Work and all applicable customs duties, excise taxes, freight, insurance, and all other charges of every kind respecting the Work except for GST/HST; and (iii) the Contract Price will not be subject to adjustments for changes in any cost of the Work to the Supplier.

(b) Notwithstanding anything to the contrary in this Contract, if established in the purchase order, OPG will reimburse the Supplier for expenses as provided in OPG’s Business Expense Schedule referred to in the purchase order. Where a Supplier that is registered for GST/HST invoices for Work and for expenses incurred in the performance of the Work, GST/HST will apply to both the Work and expenses.

4.4 North American Free Trade Agreement (“NAFTA”)

(a) Where the origin of goods is the United States, Mexico or Canada, the Supplier will deliver to OPG a valid certificate of origin with each shipment where the goods offered qualify under NAFTA.

(b) If OPG is the Importer of Record, and is required to pay any additional duties, interest, penalties or taxes resulting from: (i) an invalid certificate of origin; (ii) the Supplier refusing to supply one where applicable; or (iii) changes in the source of supply, then the Supplier will be responsible for any such additional duties, interest, penalties or taxes.

4.5 Changes in the Work

OPG may, without invalidating this Contract, direct the Supplier to make changes in the Work. When a change causes an increase or decrease in the Work, the Contract Price will be increased or decreased by the application of unit prices to the quantum of such increase or decrease or, in the absence of applicable unit prices, by an amount to be agreed upon between the Supplier and OPG’s Representative.

5 Liability

5.1 Unavoidable Loss, Damage or Delay

Neither the Supplier nor OPG will be liable to the other for loss, damage, delay in the Work, or non-performance of any contractual obligation caused by war, riot, the act or order of any competent civil or military authority, fire, flood, or by any other cause which is unavoidable and beyond the party’s reasonable control. Both parties will be prompt in restoring normal conditions, re-establishing schedules and resuming operations as soon as the interruptions have ceased.

5.2 Supplier’s Liability

The Supplier’s liability for personal and bodily injury, including death and property damage will survive acceptance, approval or use of the Work, or any part thereof, by OPG.

5.3 Limitation of Liability

Subject to section 5.1 below, the liability of either party respecting all claims arising in respect of this Contract will not exceed the total of:

(a) an amount equal to the Contract Price; plus

(b) the amount of insurance recoverable under this Contract.

5.4 Exclusions

The Supplier’s limitation of liability set out in section 5.3 above will not apply, however, to:

(a) the Supplier’s obligations (or a breach thereof) under sections 2.14, 2.17 and 3(a);

(b) claims in relation to bodily and personal injury, including death; and

(c) losses suffered or incurred by OPG, its subsidiaries and its and their respective shareholders, directors, officers, employees, advisors, agents and other representatives or any claims, demands, actions, suits or proceedings for Losses made against OPG, its subsidiaries and its and their respective shareholders, directors, officers, employees, advisors, agents and other representatives by any person, to the extent arising in respect of,
(i) fraud, gross negligence, the deliberate default or the deliberate or wilful breach of this Contract by the Supplier; or

(ii) liability for contribution or indemnity for injury or damage to third parties arising in respect of the Supplier’s negligence.

5.5 Consequential Damages

Except for Supplier’s obligations (or a breach thereof) under sections 2.14, 2.17 and 3(a), and except where recoverable under insurance, neither party will be liable to the other party for consequential damages.

6 Acceptance and Correction

6.1 Warranties

(a) The Supplier will ensure that all Equipment will be new, unused, free from defects, free from liens, of good quality and comply with all requirements under this Contract. If required by OPG, the Supplier will provide satisfactory evidence as to the kind and quality of the Equipment.

(b) The Supplier will provide the Work in accordance with its quality assurance program and any requirements set out in this Contract. OPG may have any aspect of the quality assurance program of the Supplier or a Subcontractor reviewed by auditors designated by OPG. The Supplier will identify and resolve any non-conformances in accordance with its quality assurance program and this Contract, subject to obtaining the written acceptance of the proposed disposition by the Inspector.

(c) The Supplier warrants and guarantees to OPG that for a period of one year following:

(i) the Actual Delivery Date for Equipment limited to parts; or

(ii) the Take-over Date or In-service Date, whichever is set forth in this Contract, for all other types of Equipment, the Work will in all respects be fit for the purposes intended by this Contract.

(d) All warranties and guarantees set out in this Contract are for the benefit of OPG. The Supplier’s obligations under this section 6.1 are absolute and 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.

6.2 Quality Program

(a) The Supplier will maintain a quality program that will assure OPG that the design, material and workmanship used in the Work fully meet the requirements of this Contract. The program will conform with quality program standards and/or any other alternative quality assurance requirements specified in this Contract. Any proposed alternative quality assurance requirements will be subject to evaluation by OPG for its equivalency to specified requirements.

(b) Notwithstanding the provisions of any standard or code applicable to the Work, the Supplier will be responsible for and will perform all inspection, testing and surveillance of the Subcontractors and the Work necessary to ensure that the Work meets the requirements of this Contract. OPG may perform surveillance at any time for compliance with the quality program and examine the Work whenever situated for conformance to product quality requirements.

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

(d) The Inspector will have free access, at all reasonable times, to the premises of both the Supplier and its Subcontractors and the Supplier will provide the Inspector with office accommodation for the Inspector’s exclusive use (including a desk and access to telephone), as well as facilities and assistance required for the proper performance of the Inspector’s duties. To facilitate surveillance at a Subcontractor’s premises, subcontracts that are: (i) specific to the Work; (ii) require a quality program; or (iii) have “hold” points, will reference OPG’s purchase order number. When requested, the Supplier will provide the Inspector with a copy (un-priced) of all subcontract documents.

(e) The Supplier will promptly correct all instances of non-conformance with specified quality program standards and report its corrective action to the Inspector in writing.

(f) Any non-conforming item which the Supplier proposes a disposition to “repair” or “use as is” will be brought to the attention of the Inspector, in writing, highlighting any effects on safety, interchangeability, performance, reliability, maintainability or shelf life. OPG’s Representative’s approval of such dispositions is required before proceeding.

(g) Any Work for which a unique specification does not appear in this Contract will be of a quality which meets the requirements as agreed by OPG’s Representative.

(h) Notwithstanding any provision to the contrary in this Contract, shipment will not take place until the item is released by the Inspector. Surveillance, release or approval by the Inspector, or any OPG’s Representative, will not relieve the Supplier of any of its obligations.
(i) The Supplier will retain the records required in the relevant quality program standard for a minimum period of three years after delivery of the Equipment.

(j) After delivery of the Equipment, the Supplier will promptly provide a notice to OPG of any defect in the Equipment of which the Supplier becomes aware.

6.3 Correction of Defects

(a) If, within the applicable time period specified in section 6.1(c), any part of the Work becomes defective, is deficient, or fails due to defect in design, material, or workmanship or otherwise fails to meet the requirements of this Contract, then the Supplier, 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. The Supplier will pay all transportation charges for parts and/or Equipment both ways between the Supplier’s factory or repair depot and the Equipment installation site.

(b) If the Take-over Date or In-service Date is not set forth in this Contract, it will be deemed to occur not later than six months after completion of delivery to the stipulated destination.

(c) Where the Supplier furnished technical direction of the original installation or erection of the Work, then it will also be responsible for furnishing technical direction of the removal (including site disassembly if required), re-installation or re-erection of any Work which requires repair or replacement hereunder, provided, however, where such repair or replacement results from the negligent act or omission of the Supplier in furnishing technical direction of such original installation or erection, then the Supplier will also be liable for the removal (including site disassembly if required), re-installation or re-erection of the Work which requires repair or replacement hereunder.

(d) OPG will be obliged, at its expense, to decontaminate such parts of the Work to be repaired or replaced hereunder which may be contaminated due to nuclear radiation, so that radiation from such parts will be reduced to a level that such parts may be shipped without special licensing from the Canadian Nuclear Safety Commission and, until this has been done, the Supplier will be under no obligation to correct the defects. The Supplier will not be obliged to remove, disassemble, repair, re-assemble or re-install any of the Work to be repaired or replaced hereunder, as provided for above, in a radioactive environment unless OPG will have first reduced the radiation to a safe level for occupancy by the Supplier’s Personnel without special protective clothing. Where the Supplier’s obligation to correct defects is waived under the provisions of this paragraph, the Supplier will, nonetheless, be liable to OPG for the cost of: (i) parts and materials which are required to correct the defect; and (ii) an equivalent amount of labour to repair the defect as if such repair were made in a non-radioactive environment.

(e) Any part of the Work made good under this section 6.3 will be subject to all the provisions hereof for a period of one year from the date when the same has been made good, or until the end of the period set forth in section 6.1(c), whichever is longer.

(f) In the event repair work is performed on the project site in accordance with arrangements reached between OPG’s Representative and the Supplier, the Supplier will comply with labour and working conditions prevailing on the project site and, if applicable, will compensate OPG for the value of labour and materials furnished by OPG.

7 Default by Supplier

(a) Without limitation, the following actions by or circumstances relating to the Supplier will constitute default on the part of the Supplier:

(i) committing any act of bankruptcy;

(ii) having a receiver appointed on account of insolvency or in respect of any property;

(iii) making a general assignment for the benefit of creditors;

(iv) failing to comply with or persistently disregarding statutes, laws, regulations, bylaws or directives of competent authorities relating to the Work;

(v) failing to perform the Work with skill and diligence;

(vi) assigning this Contract or any portion thereof without the required consent;

(vii) failing or refusing to correct defective or deficient Work;

(viii) giving or offering to give (directly or indirectly) to any person a bribe, gift, gratuity, commission or other thing of note as an inducement or reward; or

(ix) being otherwise in default in carrying out any of its obligations under this Contract, whether such default is similar or dissimilar in nature to the causes listed previously.

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

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

(i) terminate OPG’s use of the Supplier to perform the Work;

(ii) eject and exclude all Supplier’s Personnel from the site;

(iii) withhold any further payments to the Supplier until its liability to OPG is ascertained; and

(iv) finish or replace the Work by whatever means OPG may deem appropriate under the circumstances.

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

(i) the extra expense of finishing or replacing the Work, including compensation to OPG for additional engineering, managerial and administrative services;

(ii) the cost of correcting defects (if any) in that portion of the Work performed by the Supplier;

(iii) all other loss, damage and expense occasioned to OPG by reason of the Supplier’s default; and

(iv) applicable sales taxes.

(e) Any action by OPG under this section 7 will be without prejudice to OPG’s other rights or remedies under this Contract or law or under any security held by OPG for performance of this Contract by the Supplier.

8 Suspension and Termination

8.1 Contract Termination

OPG may from time to time, without cause and without affecting the validity of this Contract, immediately terminate any uncompleted or unperformed Work, in whole or in part, by delivering a notice to this effect to the Supplier. Except to the extent any such termination arises in respect of any event of default by the Supplier, OPG will pay the Supplier the amounts set out below, supported by any audit requested by OPG (including an audit performed by members of OPG’s internal audit staff): (i) reimbursement at the Contract Price for all items completed and delivered; (ii) reimbursement for the direct out-of-pocket costs to the Supplier for Work in progress directly incurred in the course of the Work (for greater certainty, there will be no charge for items which are not custom-manufactured for this Contract); and (iii) reimbursement for the direct out-of-pocket costs directly caused by the termination, unless the Equipment under this Contract is limited to parts, in which case, OPG will pay the Supplier a percentage of the value of the item as a restocking charge for standard stocked items. Title to all Work for which reimbursement is made will vest in OPG. OPG will not be liable to the Supplier for loss of anticipated profit or any other economic loss whatsoever on the terminated portion or portions of the Work.

9 General

9.1 Arbitration

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

9.2 Assignment

(a) This Contract enures to the benefit of and binds the parties and their respective successors and permitted assigns.

(b) Except as expressly set out in this Contract, the Supplier may not, in whole or in part, assign, licence, sublicence, subcontract, delegate or otherwise transfer this Contract or any right or obligation under this Contract.

(c) OPG may assign any of its rights and transfer any of its obligations respecting this Contract: (i) to any present or future affiliated or subsidiary enterprise of OPG; or (ii) to a third party in the course of any sale, lease, merger, amalgamation, reorganisation or other form of corporate, commercial or financial arrangement. Upon, and to the extent of such transfer, OPG will be entirely relieved of all such obligations so transferred.

9.3 Notices

Notices to OPG and the Supplier will be sent to the contact person specified in the applicable purchase order. Notices required or permitted under this Contract will be in writing and may be sent by electronic mail, registered post or fax. Such notices will be effective upon receipt.

9.4 Publicity

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

9.5 Former OPG Employees

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

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

9.7 **Waivers**

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

9.8 **Survival**

The provisions of this Contract that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance or termination or expiry of this Contract.
SCHEDULE 2.2
LABOUR OBLIGATIONS

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

LABOUR REQUIREMENTS

See attached the following documents:

1. Acknowledgement of Labour Requirements; and
2. Notice to Proponents – Fabrication Clauses.
ACKNOWLEDGEMENT OF LABOUR REQUIREMENTS

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

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

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

Dated: _________________________

[Insert Full Legal Name of Supplier]

Name: 
Title: 
NOTICE TO ALL TENDERERS –

FABRICATION CLAUSES

Pipe Fabrication/Bending

An agreement exists between the Electrical Power Systems Construction Association (EPSCA) and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada wherein a commitment has been made that all piping at the option of the Employer shall be fabricated or bent on the job site or in a shop. A “shop” is defined as a qualified pipe fabrication shop under agreement with the United Association or one of its Local Unions. There is an exception for the installation of component parts of an industrial piping system such as skid mounted vessels, pumps, driers, exchangers, etc. (but excluding pipe and piping formations between components). For further information, refer to the “Fabrication Clause” Article in the collective agreement.

Sheet Metal Work

An agreement exists between the Electrical Power Systems Construction Association (EPSCA) and the Ontario Sheet Metal Workers’ Conference wherein a commitment has been made that all sheet metal work at the option of the Employer shall be fabricated on the job site or in a shop. A “shop” is defined as a sheet metal shop under Agreement with the Sheet Metal Workers’ International Association or one of its Local Unions or the Ontario Sheet Metal Workers’ Conference. There is an exception for the supply of packaged equipment, catalogue items, and engineered assemblies. For further information, refer to the “Employer’s Responsibility” Article in the collective agreement.