



**CONTRACT
STANDARD**

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

**STANDARD COMMERCIAL TERMS
FOR ENGINEERED EQUIPMENT**

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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 actually received by OPG at the stipulated delivery point, free of defects.
- (b) **“Anti-Corruption Laws”** has the meaning given to it in Section 2.4.
- (c) **“Applicable Laws”**, in respect of any person, property, transaction or event, means: (1) all applicable laws, statutes, regulations, municipal by-laws and

ordinances and treaties, including Environmental Laws, the *Nuclear Safety Control Act* (Canada), the *Export and Import Permits Act* (Canada) and the *Nuclear Non-proliferation Import and Export Control Regulations* (Canada); (2) any requirements under or prescribed by applicable common law, judgments, orders and decrees; (3) all Codes and Standards, applicable to that person, property, transaction or event at the applicable time and, whether or not having the force of law; and (4) all applicable Approvals.

- (d) **“Approvals”** means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the Equipment

and Work as may be required by this Contract or by any applicable governmental authorities having or purporting to have authority over the subject matter contemplated herein.

- (e) **“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.
- (f) **“Contract”** has the meaning given to it in Section 1.3(a).
- (g) **“Contract Price”** means the total sum for the Work (or any portion thereof) as set forth in the purchase order(s), calculated in accordance with the applicable pricing model outlined therein.
- (h) **“Environmental Law”** means any Applicable Law relating to the protection of the natural environment (including any species that might make use of it) or human health or the import, use, storage, transportation or disposal of any hazardous materials.
- (i) **“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.
- (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 Work), and that degree of skill, diligence, prudence and foresight

expected from a skilled, experienced, reputable, professional and prudent supplier in North America specializing in the provision of the type of Work being performed by the Supplier under this Contract under the same or similar circumstances.

- (k) **“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.
- (l) **“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.
- (m) **“Intellectual Property Rights”** means any rights, anywhere in the world, in or to a patent, patent application, utility model, inventor’s certificate, invention, copyrighted work, copyright, registration, moral right, industrial design, industrial design registration, industrial design application, trade-mark registration, trade-mark application, unregistered trade-mark, goodwill in any trade-mark, trade name, Internet domain name, service mark, trade secret, know-how, confidential information, mask work or integrated circuit topography, or other intellectual property rights of any kind, whether registered or unregistered.
- (n) **“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.
- (o) **“OPG Data”** means all information,
- (p) **“OPG Group”** means OPG, each of OPG’s wholly-owned subsidiaries and each of OPG’s and each such

subsidiary's shareholder(s), directors, officers, employees, representatives, agents and advisors, including OPG's Representative.

- (q) **"OPG's Representative"** means the individual designated from time to time by OPG to exercise such power, authority or discretion as is required of such person under this Contract.
- (r) **"Subcontractor"** means a person (including the person's heirs, executors, administrators, personal and legal representatives, successors and permitted assigns) who supplies or performs any of the Work under an agreement with the Supplier, another subcontractor or a combination of the Supplier and another subcontractor.
- (s) **"Supplier"** means the party contracting with OPG under this Contract.
- (t) **"Supplier Event of Default"** has the meaning given to it in Section 8(a).
- (u) **"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.
- (v) **"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.
- (w) **"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 and Work 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. Delivery terms will be as specified in the purchase order. For certainty, all references to the parties acting "reasonably" or being "reasonable" will mean acting reasonably or being reasonable in the circumstances, having regard to the requirements of the Work.

1.3 Contract and Order of Precedence

- (a) This **"Contract"** consists of: (i) the purchase order; (ii) 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 which will take precedence over the documents amended thereby. Changes to the scope, price and schedule of the Contract will be made in accordance with Section 4.5. 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 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 Equipment and Work.

2 Supplier's Obligations

2.1 Codes of Conduct

The Supplier will:

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

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

2.2 Supplier Labour Obligations

- (a) The Supplier will comply with all labour obligations set out in Schedule 2.2, including those set out in the "Labour Requirements" attached to Schedule 2.2.

- (b) The Supplier will, at all times, maintain good order and discipline among its workers and will not use in the performance of the Work any unfit person or anyone not skilled in the task assigned to that person.

2.3 Permits, Laws and Regulations

- (a) The Supplier 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 2.3(a)(i), Good Industry Practice, in respect of the Work.
- (b) 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, including policies and procedures designed to ensure that all agents, consultants or other persons employed or acting on the Supplier's behalf or facilitating the conduct of the Supplier's business comply 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 the Supplier related to the Equipment and Work for the purpose of verifying compliance with the Anti-Corruption Laws.

2.5 Cyber Security

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

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 its Workplace Safety and Insurance Board account number to OPG before commencing the Work at any OPG 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 any OPG 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 any OPG site.

2.8 Health and Safety

For all Work provided by the Supplier on OPG premises, the Supplier will, at its expense:

- (a) comply with all Applicable Laws and OPG's safety requirements applicable to the Work;
- (b) ensure that all the Supplier's Personnel are equipped with all safeguards and personal protective equipment as may be necessary for the performance of the Work;
- (c) rectify any failures to comply with any Applicable Laws or OPG's safety requirements applicable to the Work immediately when detected or directed by OPG;
- (d) upon request by OPG, provide OPG with required safety reports or notices relating to the Work;

- (e) comply with any order to comply, stop Work or any similar order or notice respecting the Work issued by any governmental authority or by OPG;
- (f) co-operate with OPG in reporting and investigating safety violations caused by any act or failure to act of the Supplier or any of its Subcontractors; and
- (g) to the extent that the Supplier or any of its Subcontractors were responsible for a safety violation, the Supplier will pay OPG for costs and expenses incurred to investigate, report and/or alleviate the safety violation.

2.9 Title to the Equipment

Title to the Equipment (including all submittals) wherever situate, will pass to OPG no later than the time of payment, free and clear of all encumbrances of any nature.

2.10 Delivery of the Equipment

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

2.11 Shipping and Packaging Instructions

- (a) The Supplier will ship the Equipment complete and ready for installation. If the size of the Equipment prevents the Supplier from shipping it fully assembled, the Supplier will segregate the Equipment into components in a manner consistent with Good Industry Practice to allow safe and convenient transportation.

- (b) The receipt or taking delivery of the Equipment by OPG 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, and in accordance with Good Industry Practice. 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 the Equipment such as vessels, valves and pumps will be sealed. Where necessary, skids, hauling eyes, jacking plates and slingshooks 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 its expense.
 - (d) The Supplier will reduce or eliminate packaging through the use of metal pallets, cages, or plastic totes and refillable packaging.
 - (e) The Supplier will clearly and indelibly mark all cages, packages, boxes, crates, bundles, unpackaged components and bills of lading to show necessary shipping information. The Supplier will apply such markings by a method suitable to the Equipment and packaging and in a manner not affecting the function of the Equipment which provides the following information:
 - (i) destination address and OPG's purchase order number;
 - (ii) material identification number, as applicable, 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;
 - (iv) the mass and sizes of each major component or assembly (if the lifting points are critical, they will be clearly marked and identified); and
 - (v) the value of the services provided in Canada and outside Canada; identified separately.
 - (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.
- 2.12 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.

2.13 Communications

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

2.14 Environment

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

2.15 Hazardous Materials

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

2.16 Subcontractors and Supplier's Personnel

The Supplier will be fully responsible for all acts and omissions of each Subcontractor and 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 Subcontractor will breach any such obligation.

2.17 Intellectual Property

(a) Each party and Subcontractor retains all Intellectual Property Rights to methodology, knowledge and data brought to the Work and used therein. No Intellectual Property Rights existing

before the start of the Work are passed hereunder other than licences and rights to use Intellectual Property Rights as set out in this Contract.

(b) All title and beneficial ownership interests to all Intellectual Property Rights which are created or otherwise arise in the provision or performance of the Work will vest exclusively in, and remain with, OPG (the "**New Intellectual Property Rights**"). Supplier hereby assigns and will cause each Subcontractor to assign to OPG, all rights, title, and interest in and to the New Intellectual Property Rights. This assignment becomes effective in respect of each New Intellectual Property Right when such New Intellectual Property Right comes into existence, and in any event, no later than on the completion of the Work. Supplier hereby waives in favour 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 Supplier will not do any act which may compromise or diminish the New Intellectual Property Rights, the assignment to OPG of the New Intellectual Property Rights, or the licences referred to in Section 2.17(d) and will perform any acts required to confirm or document the assignment to OPG of the New Intellectual Property Rights, or the licences referred to in Section 2.17(d), including obtaining assignments of rights or waivers of moral rights from any of the Supplier's Personnel.

(d) The Supplier represents and warrants that it owns or has obtained from third parties, duly authorized grants of all right, title and interest necessary to provide to OPG a licence regarding the Intellectual Property Rights associated with the Work in the manner set out in this Contract including waivers of moral rights for the benefit of OPG and OPG's affiliates. In respect of any Intellectual Property Rights not assigned to OPG under Section 2.17(b), the Supplier hereby 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. Supplier will pay all royalties, licence fees and other monetary amounts required in respect of securing and licencing the Intellectual Property Rights referenced in this Section 2.17(d) and any other Intellectual Property Rights associated with the Work.

- (e) 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 in respect of such claims, actions or proceedings. 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 reasonably available information, assistance and authority required to conduct its defence.
- (f) If all or any part of the Work is finally determined by any court, arbitrator, or administrative body to constitute an infringement or misappropriation of Intellectual Property Rights of a third party, or if OPG is enjoined by any means from using the Work, any part thereof, or any Intellectual Property Rights embodied therein as a result of any claim of infringement or misappropriation, the Supplier will at its expense promptly: (i) obtain for OPG the right to continue using the Work; (ii) replace the allegedly infringing elements of the Work with non-infringing

elements, while maintaining the full functionality, integrity and performance capabilities of the Work; or (iii) modify the Work so that it no longer infringes, while maintaining the full functionality, integrity and performance capabilities of the Work.

2.18 Reasonable Objections by OPG

The Supplier will not use, as part of the Supplier's Personnel, any individual against whom OPG has a reasonable objection. The Supplier will promptly remove from any OPG site any such person whom OPG's Representative does not consider competent or otherwise considers unsuitable for providing the applicable Work, including for failure to comply with any applicable health or safety obligations or any other obligations under this Contract.

2.19 Confidential Information

- (a) In preparation for, and in the course of, providing the Work, OPG or the Supplier (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 Supplier is providing the Work (collectively, the "**Confidential Information**"). For certainty, when the Receiving Party is the Supplier, the Supplier will be fully responsible and liable for any disclosure of OPG Confidential Information to or by any of its Subcontractors. Confidential Information does not include, however, information that the Receiving Party is able to demonstrate to the Disclosing Party's satisfaction, acting reasonably: (i) was or becomes generally known to the public through no fault of the Receiving Party or their respective shareholders, directors, officers, partners, members, representatives, agents, advisors or any of the Receiving Party's personnel or any other Person for whom the Receiving Party is responsible at law; (ii) was specifically known by the Receiving Party before disclosure by the Disclosing Party and was not subject to any confidentiality

obligation; (iii) was developed or ascertained independently without reference to the other party's Confidential Information; or (iv) was received from a third party without such third party being under a duty of confidentiality.

- (b) All Confidential Information remains, at all times, the exclusive property of the respective Disclosing Party. Except as expressly set out in this Contract, a respective Receiving Party has no licence or other right to use or disclose any Confidential Information for any purpose whatsoever. Such Receiving Party may use Confidential Information only in respect of the preparation for, and the providing of, the Work, including in negotiations with proposed Subcontractors. Such Receiving Party will ensure that none of its or its Subcontractors' current or former shareholders, directors, officers, partners, members, representatives, agents and advisors or any of its personnel or any other person for whom such Receiving Party or any Subcontractor is responsible at law will use any of the Confidential Information for any purposes other than those expressly set out in this Section 2.19.
- (c) At the Disclosing Party's request, the Receiving Party will promptly (and in any event, within ten business days of receipt of such request) return to the Disclosing Party or destroy, at the Disclosing Party's election, any and all Confidential Information belonging to the Disclosing Party, including all reproductions and any documents based on any of the Confidential Information, and will not retain any copies thereof.
- (d) Each Receiving Party acknowledges that each Disclosing Party would not have an adequate remedy at law for monetary damages if the Receiving Party fails to fulfil any of its obligations under this Section 2.19. Accordingly, in addition to any other remedies under this Contract, each Disclosing Party will be entitled to seek equitable relief, including any injunction, specific

performance or other remedy in law or equity (without being required to post a bond or other security), in respect of any breach or threatened breach of this Section 2.19 and in which case, each Receiving Party consents to any such injunction, specific performance or other remedy in law or equity.

2.20 FIPPA and OEB Disclosure

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

2.21 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 the purchase order.

- (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 2.21 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.

2.22 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.

2.23 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.

2.24 Delivery of Counterfeit, Fraudulent and Suspect Items

The Supplier will (and will cause its Subcontractors to) not use or deliver counterfeit, fraudulent and/or suspect items ("CFSI") while providing Equipment or 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 2.24, 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 to have been used in connection with any of the Work provided under this Contract, such items may 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.

2.25 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 notarizing. 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 2.24 in accordance with Applicable Laws.

2.26 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.

2.27 Drawings and Data

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

- (a) 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 such drawings and data have been accepted in writing by OPG's Representative. Acceptance by OPG's Representative of the Supplier's drawings and data will in

no way be construed to imply relief of the Supplier from responsibility for any errors or omissions contained therein or relief from any of its obligations or liabilities under this Contract or otherwise.

- (b) Unless otherwise directed by OPG's Representative, the Supplier will promptly correct all items in drawings and data, whether or not raised by OPG's Representative, which do not conform to the requirements of this Contract. The Supplier will then return to OPG's Representative the revised drawings and data clearly identifying any revisions. The Supplier will be responsible for recovering any time lost in the review process by reason of any error or defect in the drawings and data.

- (c) 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 or data, the specifications will govern.

- (d) 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.

- (e) 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.

- (f) Drawings and data belonging to OPG are Confidential Information as per Section 2.19 of this Contract.

3 Indemnity and Insurance

3.1 Risk of Loss

The Work and Equipment will remain at the sole risk of the Supplier against loss or damage:

- (a) up to and including the Take-over Date; and
- (b) after the Take-over Date, to the extent such Work or Equipment are in the control of the Supplier or any of its Subcontractors.

3.2 Supplier Indemnity

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

- (a) all Losses suffered or incurred by a member of the OPG Group arising in respect of the Work, to the extent that any such Losses are attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property, including any resulting loss of use thereof; and
- (b) all claims made against any member of the OPG Group by any person,

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

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

OPG Group by any person, to the extent arising in respect of a breach or threatened breach by the Supplier, any Subcontractor or any of the Supplier's Personnel of Section 2.19; and

- (e) all Losses suffered or incurred by a member of the OPG Group and all claims made against any member of the OPG Group by any person to the extent arising in respect of any breach or threatened breach by the Contractor, Subcontractor or any of the Contractor's Personnel of Section 2.17,

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 Supplier under this Section 3.2 will not be affected in any way by any certificate, acceptance, approval, payment or any other act, matter or thing done or omitted under this Contract, including any act by OPG or OPG's Representative.

3.3 Insurance

The 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 Work is performed:

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

- (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.

If not already available in ISNetwork, 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) The scheduled commencement of progress or milestone payments, the number of instalments and the applicable intervals of payment will be as set out in the applicable purchase order. OPG will aggregate all outstanding invoices received and approved by OPG for payment before the 25th day of each month. Subject to any withholdings required by law, statute or regulation, OPG will pay the 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, however, on the Supplier fulfilling its obligations and making satisfactory progress in providing the Work before the date payment is made. OPG will exclusively determine whether

or not such obligations have been fulfilled and progress is satisfactory.

- (c) Notwithstanding Section 4.1(b), no invoice will be required to be paid if it is not submitted to OPG within 90 days of the performance of the Work to which the invoice relates.
- (d) The Supplier acknowledges that OPG has implemented an electronic invoicing system such as ARIBA or other similar system as OPG may designate (the "EIS") and the timely payment of amounts owing to the Supplier requires that the Supplier provide invoicing information in accordance with this system. The Supplier will set up the preliminary invoicing information on the EIS promptly following the date of this Contract. The Supplier will be responsible for maintaining access to the internet, and for the accuracy and timeliness of the data entered into the EIS. OPG will not be responsible for any delays to payments as a result of the Supplier's errors and omissions arising from the misuse of the EIS. The parties agree to work co-operatively to minimize each other's costs associated with the implementation and ongoing access and use of the EIS. The Supplier is aware and accepts that OPG will review, accept and approve of the Supplier's data submitted via the EIS prior to any issuance of payment. Nothing in this Section 4.1(d) 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.
- (e) Acceptance by the Supplier of the final payment will constitute a waiver of all claims by the Supplier against OPG except those previously made in writing in accordance with this Contract and still unsettled.
- (f) 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.

- (g) 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.
- (h) 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) Canadian Goods and Services Tax ("GST") / Harmonized Sales Tax ("HST"), if applicable, will be shown as extra and the Supplier's invoice will identify its 15 digit registration number for purposes of Part IX of the *Excise Tax Act* (Canada). The Supplier 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 Supplier's income or capital taxes imposed by any governmental authority respecting this Contract. Unless otherwise stated in this Section 4.2, OPG will have no liability for any withholding, collection, payment, remitting or reporting of any taxes or statutory deductions paid or payable by the Supplier or any Subcontractor in

respect of any Subcontractor or any employee of the Supplier or of any Subcontractor.

- (c) 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) 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 or any 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 in writing to make changes in the Work, in the form of change order attached hereto as Schedule 4.5. When a change causes an increase or decrease in the cost, scope or schedule of the Work, the Contract Price will be increased or decreased by the application of unit prices to the quantum of such increase or decrease or, in the absence of applicable unit prices, by an amount to be agreed upon between the Supplier and OPG's Representative.

5 Force Majeure

- (a) Neither the Supplier nor OPG will be liable to the other for loss, damage or delay in the Work, or non-performance of any contractual obligation caused by war, riot, the act or order of any competent civil or military authority, fire, flood, or by any other cause which is unavoidable and beyond the party's reasonable control. Both parties will be prompt in restoring normal conditions, re-establishing schedules and resuming operations as soon as the interruptions have ceased.
- (b) The Supplier will not be entitled to an extension of time for any delay covered by the above paragraph unless notice of a claim thereof is given by the Supplier within 30 days after the commencement of the delay. The length of any such extension will be determined by OPG's Representative.
- (c) Damage, loss, expense or delay incurred by the Supplier in the performance of the Work by reason of unforeseen circumstances, unanticipated difficulties and obstructions, bad weather, or other mischances that are generally considered to be part of the usual hazards associated with construction work, will be borne by the Supplier and

will not be the subject of a claim for additional compensation or schedule delay.

6 Liability

6.1 Limitation of Liability

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

6.2 Exclusions

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

- (a) the Supplier's obligations (or a breach thereof) under Sections 2.17 and 2.19;
- (b) the Supplier's indemnity obligations under Section 3.2 with respect to third party claims;
- (c) amounts recovered from insurance under this Contract, with the Supplier acting diligently in pursuit of recovery from its insurers of indemnifiable claims arising under the Contract, (or that would have been recovered had the Supplier complied with its obligations under Section 3.3) to the extent of the limits specified in Section 3.3; and
- (d) Losses suffered or incurred by a member of the OPG Group or any claims made against any member of the OPG Group by any person, to the extent arising in respect of fraud, gross negligence, or willful misconduct by the Supplier or any of its Subcontractors.

6.3 Consequential Damages

Notwithstanding any other term in this Contract, except in respect of the matters set out in Section 6.2, in no circumstances whatsoever will either party be liable to the other party for indirect, incidental or for consequential liabilities, damages, Losses, costs or expenses, including loss of profit or revenues, loss of production, loss of use or any other similar damages or loss suffered or incurred by such other party, regardless of the legal theory upon which any

such damages claim is based, even upon the fault, tort (including negligence), statute, regulation, or any other theory of law or strict liability.

7 Warranty

7.1 Basic Warranty

- (a) The Supplier confirms that it is duly authorized 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.
- (b) 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.
- (c) 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.
- (d) 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.

- (e) All warranties and guarantees set out in this Contract are for the benefit of OPG. The Supplier's obligations under this Section 7.1 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.

7.2 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 inspections, 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 wherever 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.

the removal (including site disassembly if required), re-installation or re-erection of the Work which requires repair or replacement hereunder.

7.3 Correction of Defects

- (a) If, within the applicable time period specified in Section 7.1(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 will promptly, without cost to OPG and in accordance with OPG's instructions and at times and within the period of time reasonably specified by OPG, satisfactorily correct such defect, deficiency or failure.

- (e) 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 licencing 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.

- (b) If Supplier fails to comply with its obligations under Section 7.3(a), or if there is an emergency that poses a significant risk of loss or damage to OPG's property or any person, OPG may take, directly or indirectly, any of the actions contemplated under Section 7.3(a) or such other actions as are reasonable in the circumstances, without affecting any other rights or remedies OPG may have against Supplier under this Contract. Supplier will pay to OPG all correction costs incurred by OPG in correcting any defect, deficiency or failure in the Work.

- (c) 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.

- (f) Any part of the Work made good under this Section 7.3 will be subject to all the provisions hereof for a period of one year from the date the same was made good.

- (d) 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

- (g) 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.

8 Default by Supplier

- (a) Each of the following events and circumstances constitutes an event of

default by Supplier (a “**Supplier Event of Default**”) under this Contract:

- (i) becoming subject to any act of insolvency or bankruptcy, dissolution or liquidation voluntary or otherwise;
- (ii) having a receiver, trustee, custodian or similar agent appointed on account of insolvency or in respect of any property;
- (iii) making a general assignment for the benefit of creditors;
- (iv) committing a breach of Anti-Corruption Laws;
- (v) failing to comply with any request, instruction or order of OPG’s Representative;
- (vi) failing to pay accounts relating to the Work as they come due;
- (vii) failing to comply with statutes, laws, regulations, bylaws or directives of competent authorities relating to the Work;
- (viii) failing to perform the Work with skill and diligence;
- (ix) any representation made by the Supplier herein that was intentionally false or misleading when made in any material respect;
- (x) assigning or attempting to assign this Contract, in whole or in part, except in a manner expressly permitted in Section 10.2;
- (xi) failing, neglecting, refusing or being unable at any time during the term to provide reasonably adequate Supplier’s Personnel to perform the Work;
- (xii) a change of ownership or control of the Supplier occurs

without the prior written consent of OPG;

- (xiii) failing or refusing to correct defective or deficient Work; or
 - (xiv) being otherwise in default in carrying out any of its obligations under this Contract, whether such default is similar or dissimilar in nature to the causes listed previously and failing to remedy the breach to the satisfaction of OPG within ten business days following receipt of notice from OPG specifying the breach, or if the breach cannot be cured within such ten business day period, after such longer period of time as is reasonably required to cure the breach (but no longer than 60 days in any circumstances), so long as the Supplier diligently and constantly endeavours to cure the breach during such extended period.
- (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 Sections 8(a)(i), (ii) and (iii), OPG will provide the Supplier with ten days’ written notice.
- (c) If the Supplier is in default under this Contract, then in addition to or as an alternative to terminating this Contract, OPG may:
- (i) take possession of all of the Work in progress, material, supplies, Equipment and the Supplier’s equipment then at the site (at no additional charge for the retention or use of the material, supplies, Equipment and the Supplier’s equipment);
 - (ii) eject and exclude from the site the Supplier, any Subcontractors and any of the Supplier’s Personnel;

- (iii) suspend, in whole or in part, the Supplier's provision of Work under this Contract;
- (iv) finish the Work by whatever means it may deem appropriate under the circumstances (and the Supplier, 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 Supplier but which are stored elsewhere; and/or
- (vi) withhold, without interest, all payments, in whole or in part, to the Supplier under any agreement between OPG and the Supplier until the Supplier's liability to OPG is determined.

Unless OPG otherwise directs, the Supplier will cooperate with the exercise of OPG's recourse under this Section 8, including by, if directed by OPG, (i) discontinuing the Work, (ii) ceasing to place orders for Equipment, (iii) making every effort to cancel existing orders on terms satisfactory to OPG, (iv) protecting the Supplier's equipment, (v) minimizing costs associated with such termination or cancellation, and (vi) assembling all submittals and records as may be requested by OPG in an orderly fashion; and (vii) allowing OPG's other contractors access to the site to enable OPG to exercise its rights under this Section 8.

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

9 Suspension and Termination

9.1 Suspension

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

9.2 Termination for Cause

- (a) OPG may terminate this Contract immediately and without any cost to OPG by delivering a notice to the Supplier on the occurrence of a Supplier Event of Default.
 - (i) the extra expense of finishing or replacing the Work;
 - (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.
- (b) If OPG terminates this Contract under Section 9.2(a) or exercises its rights under Section 8(c), the Supplier will be liable to OPG for:
 - (i) the extra expense of finishing or replacing the Work;
 - (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.
- (c) If any time after OPG terminates this Contract under Section 9.2(a), it is determined for any reason that a Supplier Event of Default had not occurred, the rights and obligations of

the parties will be the same as if the termination of this Contract by OPG had occurred under Section 9.3.

manufactured for this Contract); and

9.3 Termination for Convenience

(a) OPG may from time to time, without cause and without affecting the validity of this Contract, immediately terminate any uncompleted or unperformed Work, in whole or in part, by delivering a notice to this effect to the Supplier. The parties hereby acknowledge and agree that in the event OPG terminates this Contract in accordance with its terms, the Supplier will:

- (i) reimburse OPG forthwith for any portion of the Contract Price paid to the Supplier for Work not yet provided up to and including the date of termination of this Contract; and
- (ii) be deemed to have waived its right to receive the balance of the Contract Price that it has not yet received as of the date of termination of this Contract (other than for Work performed in accordance with this Contract up to the date of termination of this Contract).

(b) Except to the extent any such termination arises in respect of any Supplier Event of Default or any fraud, negligent or wilful act or omission of the Supplier or a Subcontractor, 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

(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. Before OPG pays the Supplier for such extra direct damages, the Supplier will provide to OPG such reasonable evidence of such damages as OPG may request.

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

9.4 Orderly Transition

On any termination of this Contract under Section 9, the Supplier will co-operate with OPG to ensure an orderly transition of the provision of all Work to OPG or to such party as OPG may direct so as to ensure that any disruptions to the project caused by the termination are minimized.

10 General

10.1 Dispute Resolution

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

10.2 Assignment

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

Upon, and to the extent of such transfer, OPG will be entirely relieved of all such obligations so transferred. OPG may disclose to an assignee or a proposed assignee any information and documentation respecting this Contract.

10.3 Notices

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

10.4 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.

10.5 Former OPG Employees

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

10.6 Waivers

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

10.7 Survival

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

10.8 Choice of Language

The parties confirm that it is their wish that this Contract, as well as any other documents respecting this Contract, including notices, schedules and authorizations, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tous avis, cédules et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

SCHEDULE 2.2

LABOUR OBLIGATIONS

The "Labour Requirements" (attached hereto as Attachment 2.2), all attachments thereto and all information incorporated by reference therein or linked thereto collectively form part of this Schedule 2.2. The Supplier will execute and deliver an Acknowledgement of Labour Requirements in the form attached as Attachment 2.2 prior to the commencement of any Work. The 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:

December 6, 2010



**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.

OPGI

SCHEDULE 2.5

CYBER SECURITY

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

- (a) **“Cyber Asset”** means any computing hardware, software or other computing or information technology (including firmware) transferred, licensed, made available, or otherwise provided by the Supplier 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 Supplier’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 Supplier 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 Supplier by OPG or its representatives, or otherwise received or accessed by the Supplier, under this Contract, or created or provided to OPG by the Supplier 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 Supplier:

- (a) represents and warrants to OPG that: (i) the Supplier 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 Supplier’s Personnel (which, for the purposes of these requirements, includes any of the Supplier’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 Supplier’s Personnel who is terminated or no longer needs access to OPG Systems and Information;

- (c) will notify OPG by sending an email to sccs@opg.com within 48 hours after discovering any security breach, incident or vulnerability impacting or otherwise involving OPG Systems and Information (including any Cyber Equipment if the Supplier, 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 Supplier 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 Supplier's Personnel with a unique user identification (ID) to access OPG Systems and Information ("**Designated Named Account(s)**") will: (i) ensure only the Supplier'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 Supplier's Personnel; and (iii) notify OPG immediately after becoming aware of a decision to terminate or re-assign any of the Supplier's Personnel who OPG provided Designated Named Account(s) to, to allow OPG to revoke such Supplier's Personnel's access on a timely basis;
- (f) if OPG provides the Supplier with a generic user identification (ID) to access OPG Systems and Information ("Generic Account"), will: (i) ensure only the Supplier'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 Supplier'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 Supplier'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 Supplier-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 Supplier'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 Supplier 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 Supplier retains any OPG Data created on the Supplier's computer systems by its normal back-up procedures, the Supplier: (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 Supplier does

recover any such OPG Data (including as a result of a disaster recovery procedure), the Supplier will immediately dispose of such OPG Data, unless required by Applicable Laws, provided that if the Supplier is required by Applicable Laws to recover or disclose any such OPG Data, the Supplier 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 Supplier is providing any Cyber Assets or Cyber Services to OPG, in addition to the foregoing the Supplier:

- (a) will provide to OPG: (i) documentation that describes the Supplier'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 Supplier within the specified period, the Supplier 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 Supplier 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 Supplier's system development life cycle (the Supplier will refer to applicable standards, such as the SANS Top 25 Most Dangerous Software Errors, the OWASP Top 10, or their successors).

SCHEDULE 4.5
CHANGE ORDER FORM

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

Change to Work

In accordance with Section 4.5 of the Contract, OPG hereby directs Supplier to make the following changes in the Work:

1. [•]
2. [•]

Expected Change to Contract Schedule

OPG expects that the changes to the Work 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 Work 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:

[SUPPLIER]

By: _____
Name:
Title: