

Ontario Power Generation Inc. (OPG)

STANDARD COMMERCIAL TERMS FOR MINOR SERVICES

June 2013

CONTENTS

1	Definitions	17	Project Site, Physical and Labour Conditions
2	Contract Documents and Order of Precedence	18	Language and Units of Measure
3	Communications	19	Security Check
4	Pricing	20	Canadian Social Insurance Number Requirement
5	Terms of Payment	21	Changes in the Services
6	Taxes	22	Contract Cancellation
7	Laws, Regulations and Permits	23	Intellectual Property
8	Health and Safety	24	Governing Laws
9	Liability and Insurance	25	Assignment
10	Subcontractors	26	Claims by the Contractor and Arbitration
11	Site Tidiness and Spills	27	Interpretation of Contract
12	Hazardous Materials	28	Publicity
13	Services Performance	29	Former OPG Employees
14	Default By Contractor	30	Code of Conduct
15	Time; Unavoidable Loss, Damage or Delay	31	Notices
16	Shipping, Handling and Storage of Contractor's Equipment	32	Waivers

1. Definitions

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

- (1) **Contract Documents** means the documents, including these standard commercial terms, delivered to the Contractor in respect of OPG's request for proposals for the supply or performance of the Services.
- (2) **Contract Price** means the total of any stipulated sums for the Services (or any portion thereof) set forth in the Contract, as amended by any instruction notice.
- (3) **Contractor** means the party contracting with OPG under the Contract.
- (4) **Equipment** means all materials, machinery, assemblies, instruments, devices or articles, 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.
- (5) **Intellectual Property Rights** means any rights in or to a Canadian or foreign patent, patent application, utility model, inventor's certificate, copyright, moral right, trademark, 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.
- (6) **Project Site** means the land or actual place designated by OPG for the performance of the Services.
- (7) **Services** means providing all labour, materials, supplies, Equipment, contractor's equipment (including construction equipment, tools, mobile cranes, air compressors, welding sets, bulldozers, scrapers, storage

bins, tool cribs, boxes and vehicles) and acts required to be provided by the Contractor and the delivery of any documents, designs, drawings, brochures, manuals, software, computer programs and source codes, all packaging, inspection, shipping, handling, delivery and other incidental services required by the Contract.

- (8) **Subcontractor** means a person, firm or corporation (including the person's, firm's or corporation's heirs, executors, administrators, personal and legal representatives, successors and permitted assigns) who supplies or performs any of the Services under an agreement with the Contractor, another Subcontractor or a combination of the Contractor and another Subcontractor.

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 the Contract, such words will be interpreted in accordance with that meaning. References to standard delivery arrangements will be interpreted in accordance with the Incoterms 2000.

2. Contract Documents and Order of Precedence

The Contract consists of (1) the purchase order, (2) these standard commercial terms and (3) the other Contract Documents, all as expressly amended by OPG and the Contractor in writing.

These documents take precedence in the order in which they are named above. Schedules, appendices and addenda to any Contract Document will be considered part of such Contract Document.

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

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

The Contract and the Services required thereby will be interpreted to include all Services reasonably required to provide a project result that is fit for OPG's purposes. Where the Contract Documents set 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.

3. Communications

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

4. Pricing

Unless otherwise indicated in the Contract (1) all monetary amounts are stated in Canadian funds, (2) the Contract Price includes all activities required to supply or perform the Services and all applicable sales tax (excluding Canadian Goods and Services Tax) customs duties, excise taxes, freight, insurance and all other charges of every kind respecting the Services except for Canadian Goods and Services Tax or any Harmonized Sales Tax and (3) the Contract Price will not be subject to adjustments for changes in any cost of the Services to the Contractor.

Notwithstanding anything to the contrary in the Contract, if established in the purchase order, OPG will reimburse the Contractor for expenses as provided in OPG's Business Expense Schedule referred to in the purchase order.

5. Terms 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 Contractor this aggregate amount on the 25th or, following business day if the 25th falls on a non-business day of the following month. All payments are conditional however, on the Contractor fulfilling its obligations and making satisfactory progress in providing the Services before the date payment is made. OPG will determine whether or not such obligations have been fulfilled and progress is satisfactory. For vendors located in Canada, OPG will make all payments by electronic funds transfer. The Contractor will deliver to OPG suitable electronic funds transfer instructions from time to time.

Each invoice will indicate labour-hours and/or relevant units of provision of Services.

Acceptance by the Contractor of the final payment will constitute a waiver of all claims by the Contractor against OPG except those previously made in writing in accordance with the Contract and still unsettled.

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

6. Taxes

OPG will have no liability for any of the Contractor's income or capital taxes imposed by any governmental

authority respecting the Contract. Unless otherwise stated in this Section, OPG will have no liability for any withholding, collection, payment, remitting or reporting of any taxes or statutory deductions paid or payable by the Contractor or any Subcontractor in respect of any Subcontractor or any employee of the Contractor or of any Subcontractor.

The Contractor will show Canadian Goods and Services Tax or any Harmonized Sales Tax separately on all invoices and the Contractor must identify their 15 digit registration number for purposes of Part IX of the *Excise Tax Act* (Canada). The Contractor will deduct all recoverable Canadian Goods and Services Tax or any Harmonized Sales Tax paid or payable before adding Canadian Goods and Services Tax or any Harmonized Sales Tax to amounts to be invoiced to OPG.

Certain amounts paid or credited to non-residents of Canada are subject to income tax withholding in accordance with rates and conditions set forth in the *Income Tax Act* (Canada) and regulations thereto. This non-resident tax is the liability of the non-resident and OPG remits this non-residence tax to the Canadian taxation authorities on the non-resident's behalf. OPG will have no obligation to gross up or otherwise increase payments made to the non-resident on account of OPG paying such taxes.

Under no circumstances will OPG make any tax equalisation payments of any kind.

7. Laws, Regulations and Permits

The Contractor will (and will cause each Subcontractor to) comply with all applicable laws, statutes, regulations, bylaws and codes, respecting the Services. The Contractor will obtain, at its cost, all permits and other consents required in respect of the Services.

8. Health and Safety

The Contractor will provide their Workplace Safety and Insurance Board account number to OPG before commencing Services. The Contractor will (and will cause each Subcontractor to) be and remain at all times in good standing with the Workplace Safety and Insurance Board. Before initial arrival on the Project Site, and every 60 days thereafter, the Contractor will submit a certificate of compliance from the Workplace Safety and Insurance Board as to the Contractor's status and that of all Subcontractors that will be providing Services at the Project Site.

The Contractor will (and will cause each Subcontractor to) comply, at its expense, with all relevant safety laws, statutes, regulations, bylaws, codes and rules, including those established by OPG, which pertain to the Services. Failure to so comply may result in immediate suspension of the Services or termination of the Contract without prior notice. Equipment furnished by the Contractor must be acceptable to OPG.

The Contractor will (and will cause each Subcontractor to) ensure, at no additional cost to OPG, that its workers are equipped with all safeguards and personal protective equipment necessary for the performance of the Services. Safety helmets, safety footwear and safety glasses conforming to the CSA standard selected by OPG must be worn by all workers while on the job. Metal ladders or ladders longitudinally reinforced with wire or other metallic means will not be used on the Project Site unless approved in writing by OPG.

The Contractor will (and will cause each Subcontractor to) co-operate with safety associations operating under the authority of the *Workplace Safety and Insurance Act, 1997* (Ontario) and, in the performance of the Services, will not in any manner endanger the safety of, or unlawfully interfere with the convenience of, other workers or the public.

The Contractor will (and will cause each Subcontractor to) provide OPG with a copy of all accident reports which it is required to submit, in connection with the Services, under the *Occupational Health and Safety Act* (Ontario) and the *Workplace Safety and Insurance Act, 1997* (Ontario).

In respect of the Services, the Contractor will report all accidents causing critical injuries, as defined in the regulations under the *Occupational Health and Safety Act* (Ontario), to OPG immediately by phone or fax.

The Contractor will provide a qualified first aid attendant in accordance with the *Workplace Safety and Insurance Act, 1997* (Ontario). OPG, at its discretion, may make available the Services of a first-aid attendant at the Project Site during normal working hours.

9. Liability and Insurance

The Contractor will be fully liable for loss or damage to property of others and of OPG which may arise from the Contractor's operations and for injury (fatal or otherwise) to persons arising therefrom or connected therewith. The Contractor will at all times during the time that Services are being performed under the Contract maintain and pay for property damage and public liability (commercial general and excess liability) insurance for each occurrence with limits of at least \$2,000,000 inclusive. The Contractor will ensure that OPG is an additional insured, that the policy contains a cross liability clause and a severability of interests clause and that policy states it is primary coverage and not contributory with or in excess of any other insurance that may be maintained by OPG. The Contractor will also provide and maintain in full force:

- (1) workers compensation coverage as required by the *Workplace Safety and Insurance Act, 1997* (Ontario) or similar applicable legislation covering all persons employed by Contractor or its Subcontractors in respect of the Services; and

- (2) motor vehicle liability insurance, covering all licensed motor vehicles owned, rented or leased and used in respect of the Services, covering bodily injury and property damage liability to a combined inclusive minimum limit of \$2,000,000 and including mandatory accident benefits.

No more than 60 days and no fewer than 30 days before starting any Services at the Project Site, the Contractor will deliver to OPG certificates of insurance completed by a duly authorised representative of each of the Contractor's insurers certifying that at least the minimum coverages required are in effect. The Contractor will pay the amount of all deductibles under any such coverage and may not charge back any such amount to OPG.

The Contractor's liability for personal injury (including death) and property damage, will survive acceptance, approval or use of the Services, or any portion thereof, by OPG.

10. Subcontractors

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

11. Site Tidiness and Spills

The Contractor will ensure that the Project Site is kept free of all litter and unnecessary contractor's equipment.

The Contractor will (and will cause each Subcontractor to) comply, while performing the Services on the Project Site, with all applicable laws, statutes, regulations, bylaws, codes, decrees, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals and policies of competent authorities having jurisdiction in matters of ecological protection and environmental control of soil, water and air. Without limiting the generality of the foregoing, the Contractor will (and will cause each Subcontractor to) comply with the *Environmental Protection Act* (Ontario), the *Water Resources Act* (Ontario), the *Pesticides Act* (Ontario) and all regulations applicable to the foregoing statutes. The Contractor will (and will cause each Subcontractor to) refrain from discarding waste and dumping pollutants on, at, in or near the Project Site.

The Contractor will (and will cause each Subcontractor to) comply with the requirements of the *Environmental Protection Act* (Ontario) respecting spills of fuels, oil, hydraulic fluid, herbicides and other pollutants, including the requirements to report such spills to the Ministry of the Environment and to the local municipality where the spill occurred. The Contractor will immediately notify OPG's representative of each such spill and promptly provide a copy of each such notice to OPG.

The Contractor will be responsible for all such spills and will be liable for any resulting property damage, any costs incurred by OPG for containment and clean up of the spilled material or supplies, and any costs, liability or penalties incurred by OPG due to any failure to comply with relevant legislation.

The *Environmental Protection Act* requires spill incidents involving fuels, oil, hydraulic fluid, herbicides and other pollutants to be reported forthwith to the Ministry of the Environment and to the local municipality where the spill occurred.

The Contractor will perform all acts required of the owner or controller of any spilled materials or supplies and comply with all pertinent legislation. Incidents of spills will be reported immediately to the appropriate authorities in accordance with the legislation. OPG's authorised representative will also be notified of all spills.

The Contractor will be responsible for spills and will be liable for any resulting property damage, any costs incurred by OPG for containment and clean up of the spilled material or supplies, and any costs, liability or penalties incurred by OPG due to any failure to comply with any applicable laws, statutes, regulations, bylaws, codes, decrees, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies.

12. Hazardous Materials

The Contractor will (and will cause each Subcontractor to) comply when shipping to or planning to use at, 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 Project Site 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.

13. Services Performance

OPG may reject any portion of the Services that is not performed in accordance with the Contract and, at the request of OPG; the Contractor will correct or re-perform any such Services by the time indicated by OPG's representative and at the Contractor's expense. If, in the opinion of OPG's authorised representative, it is not feasible to correct or re-perform rejected Services, OPG will only be required to pay such sum as in the opinion of OPG represents the value of the Services to OPG.

14. Default By Contractor

If the Contractor is in default in carrying out its obligations under the Contract, then OPG may, without prejudice, upon written notice to the Contractor, terminate OPG's utilisation of the Contractor to perform the Services. If the Contract is so terminated, the Contractor will forthwith leave the Project Site.

Without limitation, the following actions by or circumstances relating to the Contractor will constitute default on the part of the Contractor:

- (1) committing any act of insolvency or bankruptcy, voluntary or otherwise;
- (2) having a receiver appointed on account of insolvency or in respect of any property;
- (3) making a general assignment for the benefit of creditors;
- (4) failing to comply with any request, instruction or order of OPG's authorised representative;
- (5) failing to pay accounts relating to the Services as they come due;
- (6) failing to comply with or persistently disregarding statutes, regulations, bylaws or directives of competent authorities relating to the Services;
- (7) failing to prosecute the Services with skill and diligence;
- (8) assigning the Contract or any portion thereof without the required consent;
- (9) failing or refusing to correct defective or deficient Services;
- (10) 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
- (11) being otherwise in default in carrying out any of its obligations under the Contract, whether such default is similar or dissimilar in nature to the causes listed previously.

Notice that the Contractor is in default will not be required if the default relates to the bankruptcy, insolvency or financial instability of the Contractor. Ten days' written notice will be given in the event of other defaults.

If the Contractor is in default under the Contract, then OPG will be entitled to:

- (1) take possession of all of the Services in progress, materials, supplies, Equipment and contractor's equipment at the Project Site (at no additional charge for the retention or use of the materials, supplies, Equipment and contractor's equipment);
- (2) eject and exclude from the Project Site all personnel of the Contractor and any Subcontractor;
- (3) terminate OPG's use of the Contractor to perform the Services;
- (4) finish the Services by whatever means it may deem appropriate under the circumstances; and
- (5) withhold any further payments to the Contractor until its liability to OPG is ascertained.

The Contractor will be liable to OPG for:

- (1) the extra expense of finishing the Services, including compensation to OPG for additional engineering, managerial and administrative services;
- (2) the cost of correcting defects (if any) in that portion of the Services performed by the Contractor; and
- (3) all other loss, damage and expense occasioned to OPG by reason of the Contractor's default; and
- (4) applicable sales taxes.

Any action by OPG under this section 14 will be without prejudice to OPG's other rights or remedies under any security held by OPG for performance of the Contract by the Contractor.

15. Time; Unavoidable Loss, Damage or Delay

Time will be material and of the essence of the Contract.

Neither the Contractor nor OPG will be liable to the other for loss, damage, delay in the Services, or non-performance of any contractual obligation caused by was, riot, the act or order of any competent civil or military authority, fire, flood, strike, lockout or other labour dispute or any other cause which is unavoidable and beyond the party's reasonable control. Both parties will be prompt in resorting normal conditions, re-establishing schedules and resuming operation as soon as the interruptions have ceased.

16. Shipping, Handling and Storage for Contractor's Property

The Contractor will be solely responsible for the care, custody and control of the Contractor's property when providing the Services at the Project Site. OPG assumes no responsibility for the Contractor's property. If the Contractor wants OPG to assume possession or control of any of the Contractor's property, it must first obtain the written agreement of the individual within the OPG line management organization who has overall accountability for the execution of the Services at the Project Site, or more senior person at OPG. In such event,

OPG will take reasonable care of the Contractor's property that is in OPG's possession or control.

17. Project Site Physical and Labour Conditions

The Contractor expressly waives all claims attributable to errors and/or omissions in the information, representations or estimates by OPG or anyone acting on its behalf, whenever or however made, relative to any site physical condition, the labour conditions affecting the Services, the quantities of Services to be performed or work scheduling.

Employment of labour on the Project Site will be and remain at all times in accordance with the Labour Requirements Conditions attached hereto as an appendix. Assistance regarding the interpretation of the prevailing labour conditions may be obtained from OPG's Manager - Labour Relations. The Contractor will (and will cause each Subcontractor to) maintain good order and discipline at all times among its workers and will not use in the Services any unfit person or anyone not skilled in the task assigned to that person.

18. Language and Units of Measure

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

19. Security Check

Upon request by OPG, before permitting any worker access to the Project Site, the Contractor will:

- (1) obtain and review a criminal record check for each of the Contractor's and any Subcontractor's workers;
- (2) obtain consent from each worker to disclose the results of the criminal record check to OPG;
- (3) deliver to OPG a list of the names of all such workers for whom a criminal record check has been obtained and reviewed; and
- (4) deliver to OPG a copy of any criminal record check which discloses a criminal record for which a pardon has not been obtained.

Alternatively, OPG may subject any worker of the Contractor or any Subcontractor to employment suitability checks. Upon request by OPG, the Contractor will submit required information (e.g. Photo ID, Social Insurance Number, birth certificate, citizenship) for each such worker to OPG Security. The information requested may include a five year residence history and a 10 year work history.

OPG may in its sole discretion and without any cost to OPG refuse access to the Project Site to any such worker with a criminal record. If OPG does not refuse access to the Project Site to any such worker with a criminal record, the Contractor will not be relieved of any of its obligations under the Contract respecting that worker and the Contractor will remain completely responsible for all actions and failures to act of all workers of the Contractor and any Subcontractors while at the Project Site.

OPG's security staff will have the right to examine or search materials, supplies, Equipment and contractor's equipment brought to or removed from the Project Site by the Contractor or by any Subcontractor. If requested, the Contractor will (and will cause each Subcontractor to) deposit with the security officer an itemised list of all materials, supplies, Equipment and contractor's equipment at the time they are brought to the Project Site. The list will be used by the security staff when checking such materials, supplies, Equipment and contractor's equipment into and out of the Project Site at any security gate.

OPG's security staff will also have the right to examine or search at any time, in the presence of the Contractor's representative, any Contractor or Subcontractor enclosure on the Project Site, including the Contractor's and Subcontractor's Equipment and contractor's equipment.

OPG will not accept any claims for items deemed damaged or stolen during the course of the Services.

20. Canadian Social Insurance Number Requirement

It is a requirement of the Canadian Nuclear Safety Commission's radiation protection regulations that **all** workers must have a Canadian Social Insurance number (SIN) before commencing Services at a nuclear facility. This is to enable OPG to report the worker's radiation dose to the national dose registry.

21. Changes in the Services

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

22. Contract Cancellation

OPG may from time to time, without cause and without affecting the validity of the Contract, immediately cancel any uncompleted or unperformed Services, in whole or in part, by delivering a notice to this effect to the Contractor.

Except to the extent any such cancellation arises in respect of any event of default by the Contractor, OPG will pay the Contractor the amounts set out below, supported by any audit requested by OPG (including an audit performed by members of OPG's internal audit staff):

- (1) reimbursement at the Contract rate, if applicable, for all items completed and delivered;
- (2) reimbursement for the direct out-of-pocket costs to the Contractor for acceptable Services performed before cancellation, and
- (3) reimbursement for the direct out-of-pocket costs directly caused by the cancellation.

Except to the extent expressly set out in the Contract, title to all Services for which reimbursement is made will vest in OPG. Title to the Equipment will be transferred to OPG free and clear of encumbrances of any nature. The above settlement procedure will not apply to situations in which OPG is entitled to terminate the Contract by reason of default by the Contractor. OPG will not be liable to the Contractor for loss of anticipated profit on the cancelled portion or portions of the Services.

23. Intellectual Property

The Contractor will pay all royalties, licence fees and other monetary amounts required in respect of Intellectual Property Rights associated with the Services.

The Contractor confirms that it owns or has obtained from third parties, duly authorised grants of all right, title and interest necessary to provide to OPG a licence regarding the Intellectual Property Rights associated with the Services in the manner set out in the Contract including waivers of moral rights for the benefit of OPG. The Contractor grants to OPG an non-exclusive, irrevocable, perpetual, royalty free and fully paid-up licence and uninterrupted right to use all Intellectual Property Rights that are contained or embedded in, required for the use of, used in the production of, or required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the work. The rights granted under this paragraph include a right for OPG (1) to make copies, (2) to modify and create derivative works from the subject matter of the grant of the right, and (3) to assign, sublicense and transfer rights granted under this paragraph, in whole or in part, to a present or future affiliated enterprise of OPG or to a third party that provides services to OPG.

Upon disposition of the work in whole or in part, the Contractor will provide, upon the request of and at no charge to OPG, either (1) a direct grant to the recipient of this work,

a new licence of all Intellectual Property Rights associated with the use of this work, or (2) permission for OPG to assign and transfer to the recipient of this work all existing licences of Intellectual Property Rights associated with the use of this work.

The Contractor will, at its expense defend all claims, actions or proceedings against OPG based on any allegation that the Services, or any part of the Services, constitutes an infringement upon, or a misappropriation of any Intellectual Property Rights and will pay to OPG all resulting costs, damages, charges and expenses incurred. OPG will give the Contractor written notice of any such claim, action or proceeding and at the request and expense of the Contractor, OPG will provide all available information, assistance and authority required to conduct its defence.

If all or any part of the Services is finally determined to constitute an infringement or misappropriation of Intellectual Property Rights, or if OPG is enjoined from using any of the Intellectual Property Rights as a result of an infringement or misappropriation claim, the Contractor will at its expense promptly obtain for OPG the right to continue using the work or promptly modify or replace the non-compliant elements of the work to the extent necessary to render the work compliant, without adversely affecting the functional or performance capabilities of the work.

24. Governing Laws

The Contract and the conduct of the parties with respect to the formation and performance of the 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.

25. Assignment

The Contract enures to the benefit of and binds the parties and their respective successors and permitted assigns.

Except as expressly set out in the Contract, the Contractor may not, in whole or in part, assign, licence, sublicense, subcontract, delegate or otherwise transfer the Contract or any right or obligation under the Contract.

OPG may assign any of its rights and transfer any of its obligations respecting the Contract (1) to any present or future affiliated or subsidiary enterprise of OPG, or (2) 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.

26. Claims by the Contractor and Arbitration

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

27. Interpretation of Contract

The Contract and the conduct of the parties with respect to the formation and performance of the 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.

28. Publicity

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

29. 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 Contractor employs or will be using former employees in the Services, the Contractor must identify the names and responsibilities of each such individual for approval by OPG before engaging them in the Services.

30. Code of Conduct

The Contractor will (and will cause each Subcontractor to) 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. A current copy of the code may be reviewed at www.opg.com.

31. Notices

Notices to OPG for:

- (1) Nuclear will be addressed to the Vice President, Nuclear Supply Chain, 889 Brock Road South, Pickering, Ontario, L1W 3J2;
- (2) Electricity Production will be addressed to the Director, Electricity Production Supply Chain Services, 700 University Avenue, Toronto, Ontario, M5G 1X6;

- (3) All others will be addressed to the Director, Corporate Procurement and Business Services, 700 University Avenue, Toronto, Ontario, M5G 1X6.

Such notices will be effective upon receipt.

Notices to the Contractor will be effective upon delivery to the Contractor or the sending of same by registered post or fax to the Contractor's last address or fax number recorded with OPG.

32. Waivers

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